(13)

97-1927

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

RODNEY C. HANLON, JOEL SCRAFFORD, KRIS A. MCLEAN, RICHARD C. BRANZELL, and ROBERT PRIEKSAT,
Petitioners,

v.

PAUL W. BERGER and ERMA R. BERGER,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED MAY 26, 1998
CERTIORARI GRANTED NOVEMBER 9, 1998

138 pp

TABLE OF CONTENTS

PAGE

Chronological List of Relevant Docket Entries 1

Search Warrant (Mar. 18, 1993) 17

Application and Affidavit (Mar. 18, 1993) 19

Order Unsealing Search Warrant (Apr. 2, 1993) 27

First Seizure Warrant (Mar. 18, 1993) 28

Application and Affidavit (Mar. 18, 1993) 30

Order Unsealing Seizure Warrant (Apr. 2, 1993) 35

Second Seizure Warrant (Mar. 18, 1993) 36

Application and Affidavit (Mar. 18, 1993) 38

Order Unsealing Seizure Warrant (Apr. 2, 1993) 43

First Amended Complaint (May 16, 1995) 44

Exhibit A: Letter Agreement Between United States Attorney's Office for the District of Montana and CNN 90

Affidavit of Paul Berger (Aug. 26, 1995) 92

Plaintiffs' Response to Federal Defendants' Statement of Uncontroverted Facts, Statement of Genuine Issues and Additional Uncontroverted Facts in Support of Opposition to Motion to Dismiss or in the Alternative for Summary Judgment (Aug. 29, 1995) 97

TABLE OF CONTENTS (continued)

PAGE

[Exhibit 2 to Affidavit of Jay F. Lansing (Aug. 29, 1995)]:
CNN Producer Package Checklist: Story Setup Packet .. 131

Memorandum and Order by the United States
District Court for the District of Montana
(Feb. 26, 1996) ..... Pet. App. 27a

Opinion by the United States Court of Appeals
for the Ninth Circuit (Nov. 13, 1997) ..... Pet. App. 1a

Order Denying Rehearing and Rehearing En Banc
by the United States Court of Appeals for
the Ninth Circuit (Feb. 25, 1998) ..... Pet. App. 48a

Order Granting Motion to Stay the Mandate
Pending Filing of a Petition for Certiorari
by the United States Court of Appeals
for the Ninth Circuit (Mar. 13, 1998) .... Pet. App. 50a

Order Granting Certiorari (Nov. 9, 1998) 135

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

TERMED APPEAL

U.S. District Court
U.S. District Court of Montana (Billings)
CIVIL DOCKET FOR CASE #: 95-CV-46

Berger, et al v. Hanlon, et al — Filed: 03/21/95
Assigned to: Judge Jack D. Shanstrom — Jury Demand: Both
Demand: $0,000 — Nature of Suit: 440
Lead Docket: None — Jurisdiction: Federal Question
Cause: 28:1331 Federal Question: Other Civil Rights

RELEVANT DOCKET ENTRIES FROM THE DISTRICT COURT

3/21/95	1	COMPLAINT - Original and copy(s) 11 (Summons (es) issued) handed 11 origs & 2 of each to: runner for pltf for service (snyb) [Entry date 03/31/95]
3/21/95	3	AFFIDAVIT of Jay Lansing re [2-1] (snyb) [Entry date 03/31/95]
5/16/95	15	AMENDED COMPLAINT [1-1] (FIRST AMENDED COMPLAINT FOR DAMAGES FOR THE VIOLATIONS OF THE UNITED STATES CONSTITUTION (fourth amendment), CONSPIRACY, TRESPASS, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, CONVERSION, FOR DECLARATORY JUDGMENT AND

INJUNCTION, AND FEDERAL WIRETAP STATUTE) by plaintiff Paul W. Berger, plaintiff Erma R. Berger; jury demand (sls) [Entry date 05/19/95]

7/12/95 30 ANSWER by defendant Turner Broadcasting, defendant Robert Rainey, defendant Donald Hooper to [15-1] which is the first amended complaint (snyb) [Entry date 07/13/95]

7/21/95 31 MOTION by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean to dismiss, or in alternative for summary judgment (snyb) [Entry date 07/25/95]

7/21/95 32 STATEMENT of uncontroverted facts by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean in support of [31-1], in support of {31-2] (snyb) [Entry date 07/25/95]

7/21/95 33 DECLARATION of Rodney Hanlon by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean re [31-1], re [31-2] (snyb) [Entry date 07/25/95]

7/21/95 34 NOTICE Of Request for Judicial Notice by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean (snyb) [Entry date 07/25/95]

7/21/95 37 NOTICE of Substitution of Party USA for deft Kris McLean by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean (snyb) [Entry date 07/25/95]

8/3/95 39 RESPONSE by plaintiff Paul W. Berger, plaintiff Erma R. Berger to [37-1], to [35-1] certification and substitution (slp) [Entry date 08/10/95]

8/4/95 40 MEMORANDUM/BRIEF by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean in support of motion to dismiss [31-1], of motion for summary judgment [31-2] (slp) [Entry date 08/10/95]

8/11/95 41 ORDER by Judge Jack D. Shanstrom granting notice [37-1] that United States has been substituted in place of deft Kris McLean with respect to plaintiffs' Third Cause of Action and plaintiffs' Third Cause of Action is hereby Dismissed as to Deft Kris McLean; also ordered that caption in this action shall be amended to reflect the addition of the United States as an additional party (cc: all counsel) (slp)

8/11/95 42 MOTION by defendant USA to dismiss (slp)

8/11/95 43 MEMORANDUM/BRIEF by defendant USA in support of motion to dismiss [42-1] (slp)

8/11/95 44 RESPONSE by plaintiff Paul W. Berger, plaintiff Erma R. Berger to motion to dismiss [42-1] (slp)

816/95 46 AFFIDAVIT of Jay F Lansing re [45-1] (rmw)

8/28/95 48 MOTION by defendant Turner Broadcasting, defendant Robert Rainey, defendant Donald Hooper for summary judgment (rmw) [Entry date 08/29/95]

8/28/95 49 MEMORANDUM/BRIEF by defendant Turner Broadcasting, defendant Robert Rainey, defendant Donald Hooper in support of motion for summary judgment [48-1] (rmw) [Entry date 08/29/95]

8/28/95 50 STATEMENT of Uncontroverted facts by defendant Turner Broadcasting, defendant Robert Rainey, defendant Donald Hooper in support of [48-1] (rmw) [Entry date 08/29/95]

8/29/95 51 RESPONSE in opposition by plaintiff Paul W. Berger, plaintiff Erma R. Berger to motion to dismiss [42-1], to motion to dismiss [31-1], to motion for summary judgment [31-2] (snyb) [Entry date 08/30/98]

8/29/95 52 RESPONSE by plaintiff Paul W. Berger, plaintiff Erma R. Berger to [50-1] which is Statement of Uncontroverted Facts of defts' and also attached is the Pltfs' Statement of Genuine Issues and Addtl Uncontroverted facts in sup. of Oppo to Mot. Dism & for SJ of Defts. (snyb) [Entry date 08/30/95]

8/29/95 53 AFFIDAVIT of Paul W. Berger (snyb) [Entry date 08/30/95]

8/29/95 54 AFFIDAVIT of Jay Lansing with attachments and in separate expando due to size (snyb) [Entry date 08/30/95]

8/30/95 55 RESPONSE by plaintiff Paul W. Berger, plaintiff Erma R. Berger to Federal Defendants Request for Judicial Notice. (snyb)

9/12/95 56 RESPONSE in opposition by plaintiff Paul W. Berger, plaintiff Erma R. Berger to motion for summary judgment [48-1], to motion to dismiss [42-1], to motion to dismiss [31-1], to motion for summary judgment [31-2] (snyb) [Entry date 09/13/95]

9/12/95 57 RESPONSE by plaintiff Paul W. Berger, plaintiff Erma R. Berger to [50-1] which is Media defts' statement of uncontroverted facts, stmt of gen. issues and addtl uncontroverted facins in sup of oppo. to M/Dism or for SJ. (snyb) [Entry date 09/13/95]

9/12/95 58 AFFIDAVIT of Paul W. Berger (snyb) [Entry date 09/13/95]

9/12/95 59 AFFIDAVIT of Jay Lansing (snyb) [Entry date 09/13/95]

9/18/95 60 REPLY by defendant Rodney C. Hanlon, defendant Joel Scrafford, defendant Richard C. Branzell, defendant Robert Prieksat, defendant Kris A. McLean, defendant Turner Broadcasting, defendant Robert Rainey,

defendant Donald Hooper, defendant USA to response to motion for summary judgment [48-1], motion to dismiss [42-1], motion to dismiss [31-1], motion for summary judgment [31-2] file delivered to: Judge Shanstrom (snyb) [Entry date 09/20/95]

10/2/95 63 REPLY by defendant Turner Broadcasting, defendant Robert Rainey, defendant Donald Hooper to response to motion for summary judgment [48-1] file delivered to: shelf (rmw) [Entry date 10/3/95]

11/28/95 65 NOTICE OF SUBMISSION OF ADDITIONAL AUTHORITY BY plaintiff Paul W. Berger, plaintiff Erma R. Berger in support of their position that the defts are not entitled to qualified immunity (rmw)

12/6/95 66 MINUTES: of time set for hearing on Pending Motions & cos are present & ready to proceed & ctr hears argument & taking under advisement on 12/6/95 the motion for summary judgment [48-1], taking under advisement on 12/6/95 the motion to dismiss [42-1], taking under advisement on 12/6/95 the motion to dismiss [31-1], taking under advisement on 12/6/95 the motion for summary judgment [31-2] before Judge Jack D. Shanstrom C/R: R Mattson & Dept R. Weiss (rmw)

12/15/95 67 ORDER by Judge Jack D. Shanstrom granting motion to dismiss [42-1] which is the USA's Motion to Dismiss plaintiff's third cause of action, namely trespass. This motion dismissed

without prejudice. (cc: all counsel) (mjm) [Entry date 12/18/95]

12/20/95 68 ORDER by Judge Jack D. Shanstrom regarding [67-1] which is the Court's order dated 12/15/95 and is amended to read as follows: It is ordered that the US' motion to dismiss is granted. Plaintiff's third cause of action against the US, namely trespass, is dismissed without prejudice. (cc: all counsel) (jwg)

2/14/96 69 MOTION by plaintiff Paul W. Berger, plaintiff Erma R. Berger for order setting Prelim PT Conf (rmw)

2/26/96 70 MEMORANDUM, OPINION, AND ORDER: by Judge Jack D. Shanstrom finding the Pltf's motion for order setting Prelim PT Conf [69-1] moot., granting Federal Defts' motion to dismiss [31-1], granting Media Defts' motion for summary judgment [31-2] and terminating case (cc: all counsel) (snyb)

2/26/96 71 JUDGMENT: Judge Jack D. Shanstrom regarding [70-1], [70-2] which is the Memo/Order and placed in Judgment Book #65 and Page #2764 with copy of Memo/Order attached. (cc: all counsel) (snyb)

3/5/96 74 NOTICE OF APPEAL by plaintiff Paul W. Berger, plaintiff Erma R. Berger, from Dist. Court decision, [70-2] Fee Status/Amount - aid $105.00 Receipt #11768 (cc: all counsel) (snyb)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GENERAL DOCKET FOR
Ninth Circuit Court of Appeals

Court of Appeals Docket #: 96-35251 Filed: 3/8/96
Nsuit: 3440 Other civil rights (Fed)
Berger, et al v. Hanlon, et al
Appeal from: District of Montana (Billings)

RELEVANT DOCKET ENTRIES IN THE COURT OF APPEALS

3/14/96	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. setting schedule as follows: CADS is due 3/21/96; appellant's designation of RT is due 3/15/96; appellee's designation of RT is due 3/25/96; appellant shall order transcript 4/4/96; court report shall file transcript in DC by 5/6/96; certificate of record shall be filed by 5/13/96; appellant's opening brief is due 6/21/96; appellees' is due 7/22/96; appellants' reply brief is due 8/5/96; [96-35251] (ft) [96-35251]
4/2/96	Filed certificate of record on appeal RT filed in DC 3/27/96 [96-35251] (mhf) [96-35251]
4/2/96	Filed Appellant Paul W. Berger, Appellant Erma R. Berger motion to expedite appeal. (WIP PER PROMO) [96-35251] served on 3/28/96. [96-35251] (sf) [96-35251]

4/9/96	Filed PROMO order (Deputy Clerk: cag) Aplt's opposed mot for an expedited briefing schedule and priority calendaring is granted as follows: the opening brief and excerpts of record are due 5/1/96, the ans brief is due 5/31/96, and the reply brief is due 14 days from service of the ans brief. This appeal shall be placed on the next available calendar upon completion of briefing. [96-35251] (tsp) [96-35251]
5/3/96	Filed original and 15 copies of Appellant Paul W. Berger Appellant Erma R. Berger opening brief (Informal: n) 39 pages and five excerpts of record in 2 volumes; served on 5/1/96 [96-35251] (sf) [96-35251]
6/3/96	Filed original and 15 copies appellee Turner Broadcasting, Robert Rainey, Donald Hooper in 55 pages brief, 0 Exc. vols: served on 5/31/96 [96-35251] (sf) [96-35251]
6/13/96	Filed motion and PROMO deputy clerk order: (Deputy Clerk: cg) Aplt's motion to file consolidated joint oversize brief in these appeals is denied. Aplt's motion to set one hearing date for both numbers is granted as follows: These appeals shall be calendared together if possible. in 96-35251, 96-35266 (Motion recvd 6/12/96) [96-35251, 96-35266] (sf) [96-35251 96-35266]
6/17/96	Filed original and 15 copies of appellee Rodney C. Hanlon, Joel Scrafford, Richard C. Branzell, Robert Prieksat, Kris A. McLean 28 pages brief, 0 Exc. vols; served on 6/14/96 [96-35251] (sf) [96-35251]

6/21/96 Filed, as of 4/2/96, certified record on appeal in 1 Vols. (total): -0- Clerks Rec 1 Rts (ORIGINAL) [96-35251] [96-35251] (mhf) [96-35251]

7/15/96 CALENDARED: Seattle Sept 19 1996 9:00 a.m. Courtroom Park Place, 21st Flr [96-35251, 96-35266] (th) [96-35251 96-35266]

7/22/96 Received orig and 15 copies Paul W. Berger in 96-35251, Erma R. Berger in 96-35251, Paul W. Berger in 96-35266, Erma R. Berger in 96-35266's reply brief (Informal: n) of 20 pages served on 7/15/96 deficient motion pending to file joint brief. [96-35251, 96-35266] (ft) [96-35251 96-35266]

8/16/96 Filed CNN AND Jack Hamann motion for allowance of additional oral argument time (PANEL) [96-35266] served on 8/13/96. (sf) [96-35251 96-35266]

8/20/96 Filed Appellants response Media Aples' mtn for allowance of additional oral argument time, stating they do not oppose but requests they do be allowed equal time. served on 8/19/96 (PANEL) [96-35251, 96-35266] (mhf) [96-35251 96-35266]

8/22/96 Received Joel Scrafford, Richard C. Branzell, Robert Prieksat, Kris A. McLean, USA additional citations, served on 8/21/96. (PANEL) [96-35251] (sf) [96-35251]

8/29/96 Filed order (Deputy Clerk; gb) The motion for formal enlargement of time is DENIED.

(PHONED at 8:00 AM) [96-35251] (sf) [96-35251]

9/10/96 Filed order (Deputy Clerk: cc) Court TV applied to videotape the case captioned above, scheduled to be heard in Seattle, on Thursday, September 19, 1996. A majority of the judges on the panel have voted to deny the application. Court TV's request to videotape is DENIED. [96-35251, 96-35266] (sf) [96-35251 96-35266]

9/13/96 Received Turner Broadcasting, Robert Rainey, Donald Hooper, Jack Hamann, Cable News additional citations, served on 9/11/96 (FAXED TO PANEL) [96-35251, 96-35266] (sf) [96-35251 96-35266]

9/19/96 ARGUED AND SUBMITTED TO Mary M. SCHROEDER, Andrew J. KLEINFELD, Rudi M. Brewster [96-35251, 96-35266] (ah) [96-35251 96-35266]

9/19/96 Received Appellants Berger in 96-35251, 96-35266 additional citations, served on 9/19/96. (panel) [96-35251, 96-35266] (ah) [96-35251 96-35266]

9/19/96 Received Turner Broadcasting in 96-35251, Cable News in 96-35266 additional citations, served on 9/19/96. (PANEL) [96-35251, 96-35266] (ah) [96-35252 96-35266]

4/16/97 Rec'd federal aples' (USA, et al) add'l citations; served on 4/15/97 to (PANEL). [96-35251] (jr) [96-35251]

4/28/97	FILED SUPP'L RECORD ON APPEAL IN THREE VOLUMES PLEADINGS & (filed 4/2/96) & 1 expando folder. RECORD NOW IN FOUR VOLUMES. [96-35251] (jr) [96-35251]
8/1/97	Received Paul W. Berger, Erma R. Berger additional citations, served on 7/31/97 (PANEL) [96-35251] (sf) [96-35251]
8/14/97	Rec'd aples' (CNN, HAMANN, TBS, Rainey & Hooper) addl citations; served on 8/12/97 to (PANEL). [96-35266, 96-35251] (jr) [96-35251 96-35266]
10/1/97	Rec'd aplts' ltr of add'l citations; served on 9/29/97 to (PANEL). [96-35251, 96-35266] (jr) [96-35251 96-35266]
10/2/97	Rec's aplts' add'l citations; served on 9/30/97 to (PANEL). [96-35251, 96-35266] (jr) [96-35251 96-35266]
11/13/97	FILED OPINION; AFFIRMED IN PART, REVERSED AND REMANDED IN PART for further proceedings. Costs are awarded to aplts. (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. Mary M. Schroeder, author; Andrew J. Kleinfeld; Rudi M. Brewster) FILED AND ENTERED JUDGMENT. [96-35251, 96-35266] (jr) [96-35251 96-35266]
11/26/97	Filed Appellants Paul W. Berger & Erma bill of costs in the amt of $1,011.60, served on

	11/24/97 [96-35266, 96-35251] (mhf) [96-35251 96-35266]
12/5/97	MANDATE ISSUED [96-35251, 96-35266] issued in error, US case. Mdt was rtn from DC, & rcv 12/19/97. (jr) [96-35251 96-35266]
12/23/97	[3364325] Filed original and 40 copies of aple's (Turner Broadcasting, Robert Rainey, Donald Hooper, Cable News petition for rehearing with suggestion for rehearing en banc 15 pages; served on 12/22/97 to (PANEL & ALL ACTIVE JUDGES). [96-35251, 96-35266] (jr) [96-35251 96-35266]
12/29/97	Filed ABC, Inc. et al motion to become amicus curiae; served on 12/26/97 to (PANEL & ALL ACTIVE JUDGES). (3365617) [96-35251, 96-35266] (jr) [96-35251 96-35266]
12/29/97	Rec'd Amicus' (ABC, Inc. et al) brf in 40 copies of 15 pages; served on 12/26/97 to (PANEL & ALL ACTIVE JUDGES). [96-35251, 96-35266] (jr) [96-35251 96-35266]
12/29/97	[3365852] Rec'd federal aples' original and 40 copies petition for rehearing with suggestion for rehearing en banc; served on 12/27/97. Deficient; no covers & entitled "Federal Aples' Petition, et al" & indicates csl is for federal defendants-aplts. Notified counsel (jr) [96-35251 96-35266]
12/29/97	Received ltr dtd 12/23/97 from aplts Paul W. Berger & Erma R. Berger re: to clarify the procedural posture of the recently filed petns for

rhrg & suggestion of appropriateness for rhrg; served on 12/23/97 (PANEL only) [96-35251, 96-35266] (mhf) [96-35251]

1/7/98 Rec'd aples' (Turner Broadcasting, et al in 96-35251 & Jack Hamann & Cable News in 96-35266) ltr dated 1/6/98 in response to ltr rec'd 12/29/97 re: en banc petitions filed to (PANEL & ALL ACTIVE JUDGES; 12/23/97 ltr sent to ALL ACTIVE JUDGES) [96-35251, 96-35266] (jr) [96-35251 96-35266]

1/8/98 [3371030] Filed original and 40 copies federal aples petition for rehearing with suggestion for rehearing en banc 15 pages; served on 12/27/97 to (PANEL & ALL ACTIVE JUDGES). [96-35251] (jr) [96-35251]

1/9/98 Rec'd aplts' (Bergers) ltr dated 1/7/98 in response to media aples 1/6/98 ltr to (PANEL & ALL ACTIVE JUDGES). [96-35251, 96-35266] (jr) [96-35251 96-35266]

1/12/98 Rec'd federal aples' ltr dated 1/6/98 in response to plaintiff-aplts 12/23/97 ltr re: procedures and petition for rehearing to (PANEL & ALL ACTIVE JUDGES). [96-35251] (jr) [96-35251]

2/25/98 Filed order (Mary M. Schroeder, Andrew J. Kleinfeld & Rudi M. Brewster) the petition for rehearing are denied & the suggestions for rehearing en banc are rejected. [3371030-1] in 96-35251, [3364325-1] in 96-35266, 96-35251 [96-35251, 96-35266 (jr) [96-35251 96-35266]

3/4/98 Filed aples' (Turner Broadcasting, et al) motion to stay the mandate pending petition for certiorari, [96-35251, 96-35266] served on 3/3/98 to (MMS). [3406532] (jr) [96-35251 96-35266]

3/4/98 Filed aple's (Rodney C. Hanlon, et al) motion to stay the mandate pending filing of petition for certiorari; [96-35251] served on 3/4/98 to (MMS). [3406901] (jr) [96-35251]

3/9/98 Filed aplts' (Bergers) opposition to motion to stay mdt; served on 3/6/98 to (MMS). [96-35251, 96-35266] (jr) [96-35251 96-35266]

3/12/98 Filed aplts' (Bergers) opposition to motion to stay mdt; served on 3/11/98 to (MMS). [96-35251, 96-35266] (jr) [96-35251 96-35266]

3/13/98 Filed order (Mary M. Schroeder) the motion to stay the mdt pending filing of a petition for certiorari is granted pursuant to FRAP 41. [3406532-1] in 96-35251, 96-35266. [3406901-1] in 96-35251 [96-35251, 96-35266] (jr) [96-35251 96-35266]

6/1/98 Rec'd ntc from Supreme Court; petition for certiorari filed. Supreme Court No. 97-1914; filed on 5/26/98 & placed on dkt 5/28/98. [96-35251, 96-35266] (jr) [96-35251 96-35266]

6/5/98 Rec'd ntc from Supreme Court; petition for certiorari filed. Supreme Court No. 97-1927; filed on 5/26/98 & placed on dkt 5/29/98. [96-35251, 96-35266] (jr) [96-35251 96-35266]

7/9/98 Received notice from Supreme Court: petition for certiorari was filed on 6/29/98 & placed on the dkt 7/2/98 as No. 98-38. [96-35251, 96-35266] (mhf) [96-35251 96-35266]

11/5/98 Filed Supreme Court order, certiorari denied on 11/2/98. Supreme Court No. 98-38 [96-35251, 96-35266] (jr) [96-35251 96-35266]

11/13/98 Rec'd nte from Supreme Court, petition for certiorari GRANTED on 11/9/98. The case is consolidated with #98-83, Wilson v. Layne, and a total of 1 hour is allotted for oral argument. Supreme Court No. 97-1927 (jr) [96-35251 96-35266]

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

In the Matter of the Search of The Paul W. Berger Ranch with appurtenant structures, excluding the residence. (See Attachments 1 and 2 for legal description)	SEARCH WARRANT Case Number: MCR-93-9-GF Became CR-93-46-BLG

To: Special Agent, U.S.F.W.S. and any Authorized Officer of the United States

Affidavit(s) having been made before me by Rodney C. Hanlon, Special Agent who has reason to believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

The Paul W. Berger Ranch with appurtenant structures, excluding the residence. (See Attachments 1 and 2 for legal description)

in the _____ District of Montana there is now concealed a certain person or property, namely (describe the person or property)

Documents, records, coyote gettes, cyanide charges, chemicals, livestock carcasses and wildlife carcasses, including eagles, which would document the taking of wildlife in violation of Federal laws (16 USC 668, 16 USC 703, and 16 USC 1538).

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before March 26, 1993 (not to exceed 10 days) the person or place

named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to U.S. Magistrate Robert Holter as required by law.

March 18, 1993 at 9:55 a.m. at Great Falls, Montana
Date and Time Issued — City and State

Robert Holter, U.S. Magistrate /s/
Name & Title of Judicial Officer — Signature of Judicial Officer

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

In the Matter of the Search of The Paul W. Berger Ranch with appurtenant structures, excluding the residence. (See Attachments 1 and 2 for legal description)	APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT Case Number MCR-93-9-GF

I, Rodney C. Hanlon being duly sworn depose and say:
I am a(n) Special Agent, U.S. Fish and Wildlife Service and have reason to believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

The Paul W. Berger Ranch with appurtenant structures, excluding the residence. (See Attachments 1 and 2 for legal description)

in the _____ District of Montana there is now concealed a certain person or property, namely (describe the person or property)

Documents, records, coyote gettes, cyanide charges, chemicals, livestock carcasses and wildlife carcasses, including eagles

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

would document the taking of wildlife

in violation of Title 16 United States Code, Section(s) 668 and 703 . The facts to support the issuance of a Search Warrant are as follows:

See attached supporting affidavit

Continued on the attached sheet and made a part hereof.
☒ Yes ☐ No

Rodney C. Hanlon /s/
Signature of Affiant

Sworn to before me, and subscribed in my presence

March 18, 1993 at Great Falls, Montana
Date City and State

Robert Holter, U.S. Magistrate /s/
Name & Title of Judicial Officer Signature of Judicial Officer

AFFIDAVIT FOR SEARCH WARRANT

Rodney C. Hanlon, Special Agent, U.S. Fish and Wildlife Service, Department of the Interior, first duly sworn, deposes and states:

1. The affiant has been employed by the United States Fish and Wildlife Service for 20 years, has a Bachelor of Science degree in Wildlife Biology from Washington State University. Affiant has training and experience in the identification of wildlife and conducting wildlife investigations, including eagle poisonings.

2. Since January of 1993, an investigation has been conducted by the United States Fish and Wildlife Service agents, into the poisoning of eagles and other migratory birds on a ranch in Garfield County, Montana.

3. That the United States Fish and Wildlife Service has jurisdiction to enforce the Endangered Species Act, 16 USC 1531 et seq, the Eagle Protection Act, 16 USC 668, and the Migratory Bird Treaty Act, 16 USC 703 et seq, within the United States.

4. The under 16 USC 668(b) all bald or golden eagles or parts, nests or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of section 668 to 668d of this title shall be subject to forfeiture to the United States.

5. That under 16 USC 668(d) all guns, traps, nets and other equipment, vessels, vehicles, aircraft and other means of transportation used to aid in the taking, possessing and transporting of any bald or golden eagle or part, nest, or egg thereof, in violation of sections 668 to 668d of this title shall be subject to forfeiture to the United States.

6. On January 26, 1993, affiant received information that Mike Moore, Warden Sgt., Montana Department of Fish, Wildlife and Parks, Miles City, Montana interviewed two

former employees of Paul Berger. Berger operates a sheep ranch near Sand Springs, Garfield County, Montana. Both employees had knowledge that Berger uses poisons to kill eagles on the ranch. Dead eagles, other migratory birds and poisons were observed by both former employees.

7. On February 5, 1993, affiant and Special Agent Rick Branzell interviewed Vernon Austin. Austin worked for Paul Berger on the Berger Ranch from October of 1989 through March 25, 1990. During this time, Austin saw three dead eagles on the Berger Ranch. Austin was aware poisons and coyote getters were utilized on the ranch. On two separate occasions, Austin saw coyote getters and poisons in the tool shed on the Berger Ranch. Austin knew where a dump site for eagles was located on the ranch. Austin also observed two sheep carcasses on the ranch. Austin saw dead magpies near these two carcasses.

8. Near the end of December of 1989. Austin and Berger were driving on the Berger Ranch. Austin observed a bald eagle perched on a lamb carcass. Berger told Austin he would come up and put some "dope" on the carcass and take care of the eagle.

9. In mid February of 1990, Austin saw a dead adult bald eagle in the back of Berger's red Chevrolet pickup, parked on the Berger Ranch. The bird was under a set of tire chains. Austin saw the bird's white head.

10. On February 5, 1993, affiant and Special Agent Rick Branzell interviewed Paul Booth. Booth worked for Paul Berger on the Berger Ranch from April of 1989 through December of 1989. While working for Berger, Booth heard Berger express his hatred for eagles on numerous occasions. Berger expressed a dislike for the government because they would not let him use poisons to control eagles on the ranch. Booth said Berger would drive around the ranch looking for carcasses to lace with poison to control predators.

11. In the fall of 1989, Booth observed two dead golden eagles in an oat field he was swathing. The oat field was on the Berger Ranch.

12. Booth said Berger kept numerous chemicals on the ranch including Warbex, Ivomec, poisoned oats and quite possibly Temik. Booth said he had experience with Temik after leaving the Berger Ranch. Booth described Temik as a granular, charcoal colored substance. Booth said these chemicals were observed in the tool shed on the Berger Ranch.

13. Booth found a set of coyote getter on the Berger Ranch. Paul Berger warned Booth to keep his dog out of the area because coyote getters were set in the pasture. Both and Vernon Austin found another coyote getter set near a gate on the Berger Ranch.

14. On February 6, 1993, affiant and Special Agent Rick Branzell interviewed Tanya Jones. Jones worked for Paul Berger on the Berger Ranch from January 1, 1991 through March 16, 1991. During this time, Jones saw approximately ten dead eagles on the Berger Ranch.

15. In February of 1991, Jones found some dead lambs on the Berger Ranch. Jones told Berger about them. Jones observed Berger take a plastic container out of the shop and put it in his new maroon and black Chevrolet pickup. Jones and Berger would drive out to the lamb carcasses. Jones would observe Berger pouring a portion of the contents of the plastic container on the carcasses.

16. Jones said all of the dead eagles she saw on the Berger Ranch were found within five feet of the lamb carcass. Jones observed Berger pouring this chemical on the lamb carcasses many times. Berger referred to this chemical as "dope." Berger told Jones this chemical was outlawed a few years back.

17. Jones and Berger found a live bald eagle, that appeared sick, near a lamb carcass on the ranch. Berger shot and killed the bird with a rifle in the presence of Jones. Berger then

placed the bird in his new maroon and black Chevrolet pickup. Berger hid the bird under a pile of rocks on the ranch.

18. Jones asked Berger it was illegal to poison eagles. Berger said yes he knew it was illegal. Berger said they count eagles in Yellowstone Park. They miss the birds on his place. Berger said eagles kill his sheep and he has to make a living.

19. Jones said Berger was paranoid about being caught poisoning eagles on the ranch. Jones said Berger routinely hid dead eagles under trees and rock piles to avoid detection, from the air, by the Fish and Game.

20. In February of 1993, affiant acquired a 1990 land ownership map of Garfield County, Montana. Affiant located all land owned by Paul Berger. Berger's land was identified by the number 134. (See Attachment 2).

21. On March 15, 1993, affiant requested a records check be conducted by the Permits Examiner, U.S.F.W.S., Denver, Colorado. The examination revealed Paul W Berger does not have a permit or authorization by the U.S. Fish and Wildlife Service to take, possess, or transport bald or golden eagles.

22. Based on the aforementioned parts and the experience of this agent, said premises known as the Paul W. Berger Ranch with appurtenant structures, excluding the residence (See Attachments 1 and 2 for legal description) contain documents, records, coyote getters, cyanide charges, chemicals, livestock carcasses and wildlife carcasses, including eagles, which would document parts of past and ongoing criminal violations, and are therefore subject to search and seizure under 16 USC 668 et seq, 16 USC 703 et seq., 16 USC 1538, and Rule 41.

23. The information contained in this affidavit is known to the affiant through interviews of Vernon Austin, Paul Booth, Tanya Jones, records checks of Garfield County, and discussions with Warden Sgt. Mike Moore.

24. Based on the experience of affiant in conducting eagle poisoning investigations, it is common practice for sheep producers to control predators during the spring lambing season. It is believed by affiant that Paul W. Berger has illegally poisoned eagles from 1989-1991 and that this criminal conduct continues at the present time.

/s/
Rodney C. Hanlon, Special Agent
U.S. Fish and Wildlife Service

Sworn to before me, and subscribed in my presence, this 18th day of March 1993.

/s/
Robert Holter, U.S. Magistrate
United States District Court
District of Montana

Attachment 1

Legal Description of Paul Berger's Deeded Lands

T 17 N, R 33 E, Sections 3,4,5, and 6

T 18 N, R 31 E, Section 13

T 18 N, R 32 E, Sections 2,3,5,8,9,10,13,14,15,17,18,20,21, 22,23,24,25,26, and 27

T 18 N, R 33 E, Sections 17,18,19,20,21,22,26,27,28,29,30, 31,32,33,34, and 35

T 19 N, R 31 E, Sections 11,12,13, and 14

T 19 N, R 32 E, Sections 1,9,10,11,12,13,15,27,28,29,32,33, 34, and 35

T 19 N, R 33 E, Sections 6 and 7

T 19 N, R 34 E, Sections 4 and 6

T 20 N, R 34 E, Sections 32 and 33

All Montana Principal Meridian

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

In the Matter of the Search of	)
The Paul W. Berger Ranch with	)
appurtenant structures, excluding	) No. MCR-93-9-GF
the residence.	)

IT IS ORDERED that the above-captioned file is hereby unsealed.

DONE AND DATED this 2nd day of April 1993.

/s/
ROBERT M. HOLTER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

In the Matter of the Seizure of
One 1990 Chevrolet truck,
red and black in color, Montana
license plate 50T 199A,
VIN 1GCGK34N9LE144315

SEIZURE WARRANT

Case Number:
MCR-93-10-GF

To: Special Agent, U.S.F.W.S. and any Authorized Officer of the United States

Affidavit(s) having been made before me by Special Agent Rod Hanlon who has reason to believe that ☐ on the person of or ☐ on the premises known as (name, description and/or location)

One 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315

in the _____ District of Montana there is now concealed a certain person or property, namely (describe the person or property)

and said 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315 was used to transport an eagle in violation of 16 USC 668 and is subject to forfeiture pursuant to 16 USC 668.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to seize on or before March 26, 1993 (not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to U.S. Magistrate Robert Holter as required by law.

March 18, 1993 at 10:00 a.m. at Great Falls, Montana
Date and Time Issued — City and State

Robert Holter, U.S. Magistrate — /s/
Name & Title of Judicial Officer — Signature of Judicial Officer

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

In the Matter of the Seizure of One 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315	APPLICATION AND AFFIDAVIT FOR SEIZURE WARRANT Case Number MCR-93-10-GF Became CR-93-46-BLG

I, Rodney C. Hanlon being duly sworn depose and say:
I am a(n) Special Agent, U.S. Fish and Wildlife Service
and have reason to believe that ☐ xxxxxxxxxxxxxxxxxx
☐ xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

in the _____ District of Montana there is now concealed a certain person or property, namely (describe the person or property)

One 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

That said 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315 was used to transport an eagle concerning a violation of Title 16 United States Code, Section(s) 668 . The facts to support a finding of Probable Cause are as follows:

See attached supporting affidavit

Continued on the attached sheet and made a part hereof.
☒ Yes ☐ No

Rodney C. Hanlon /s/
Signature of Affiant

Sworn to before me, and subscribed in my presence

March 18, 1993 at Great Falls, Montana
Date City and State

Robert Holter, U.S. Magistrate /s/
Name & Title of Judicial Officer Signature of Judicial Officer

AFFIDAVIT FOR SEIZURE WARRANT

Rodney C. Hanlon, Special Agent, U.S. Fish and Wildlife Service, Department of the Interior, being first duly sworn, deposes and states:

1. The affiant has been employed by the United States Fish and Wildlife Service for 20 years, has a Bachelor of Science degree in Wildlife Biology from Washington State University. Affiant has training and experience in the identification of wildlife investigations, including eagle poisonings.
2. Since January of 1993, an investigation has been conducted by the United States Fish and Wildlife Service agents, into the poisoning of eagles and other migratory birds on a ranch in Garfield County, Montana.
3. That the United States Fish and Wildlife Service has jurisdiction to enforce the Endangered Species Act, 16 USC 1531 et seq, the Eagle Protection Act, 16 USC 668, and the Migratory Bird Treaty Act, 16 USC 703-707 within the United States.
4. The under 16 USC 668(b) vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bald or golden eagle in violation of 16 USC 668 to 16 USC 668d, shall be subject to forfeiture to the United States.
5. On January 26, 1993, affiant received information that Mike Moore, Warden Sgt., Montana Department of Fish, Wildlife and Parks, Miles City, Montana, interviewed two former employees of Paul Berger. Berger operates a sheep ranch near Sand Springs, Garfield County, Montana. Both employees had knowledge that Berger uses poisons to kill eagles on the ranch. Dead eagles, and poisons were observed in two of Berger's vehicles.

6. On February 6, 1993, affiant and Special Agent Rick Branzell interviewed Tanya Jones. Jones worked for Paul Berger on the Berger Ranch from January 1, 1991 through March 16, 1991. During this time, Jones saw approximately ten dead eagles on the Berger Ranch.
7. In February of 1991, Jones found some dead lambs on the Berger Ranch. Jones told Berger about them. Jones observed Berger take a plastic container out of the shop and put it in his new maroon and black Chevrolet pickup. Jones knew the truck was new as it still had plastic seatcovers on it. Berger and Jones drove out to the lamb carcasses in this truck. Jones observed Berger pour a portion of the contents of the plastic container on the lamb carcasses.
8. Jones said all the dead eagles she saw on the Berger Ranch were found within five feet of a lamb carcass. Jones observed Berger pouring this chemical on lamb carcasses many times. Berger referred to this chemical as "dope." Berger said this chemical was outlawed a few years back.
9. Jones and Berger found a live bald eagle, that appeared sick, near a lamb carcass on the ranch. Berger shot and killed the bird with a rifle. Berger put the bird in the back of his red and black Chevrolet pickup. Berger took the bird to a pile of rocks and hid it in the rocks. Jones observed Berger kill, transport and hide the bird.
10. Jones said Berger knew it was illegal to use poisons to control birds. Berger said eagles killed his sheep and he had to make a living.
11. On February 18, 1993, Shirley Squire, Legal Assistant in Billings, Montana ran an inquiry into all vehicles owned by Paul Berger.
12. On February 26, 1993, affiant received the results of the motor vehicle inquiry from the Registrar's Bureau in Deer Lodge, Montana. It shows a 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315 is registered to Paul W. Berger,

General Delivery, Sand Springs, Montana. The date of purchase of this vehicle is December 31, 1990.

13. On March 15, 1993, affiant requested a records check to be conducted by the Permits Examiner, U.S.F.W.S., Denver, Colorado. That examination revealed Paul W. Berger did not have a permit or authorization by the U.S. Fish and Wildlife Service to take, possess, or transport bald or golden eagles.

14. Based on the aforementioned parts and the experience of this agent, said 1990 Chevrolet truck, red and black in color, Montana license plate 50T 199A, VIN 1GCGK34N9LE144315 is part of past criminal violations (16 USC 668) and thus subject to forfeiture pursuant to 16 USC 668b.

15. The information contained in this affidavit is known to the affiant through an interview of Tanya Jones and discussion with Warden Sgt. Mike Moore.

/s/
Rodney C. Hanlon, Special Agent
U.S. Fish and Wildlife Service

Sworn to before me, and subscribed in my presence, this 18th day of March 1993.

/s/
Robert Holter, U.S. Magistrate
United States District Court
District of Montana

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

In the Matter of the Seizure of	)
One 1990 Chevrolet Truck, Red	)
and Black in Color, Montana	) No. MCR-93-10-GF
License Plate 50T 199A, VIN	)
1GCGK34N9LE144315	)

IT IS ORDERED that the above-captioned file is hereby unsealed.

DONE AND DATED this 2nd day of April 1993.

/s/
ROBERT M. HOLTER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

In the Matter of the Seizure of One 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605	SEIZURE WARRANT Case Number: MCR-93-11-GF Became CR-93-46-BLG

To: Special Agent, U.S.F.W.S. and any Authorized Officer of the United States

Affidavit(s) having been made before me by Special Agent Rod Hanlon who has reason to believe that ☐ on the person of or ☐ on the premises known as (name, description and/or location)

One 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605

in the _____ District of Montana there is now concealed a certain person or property, namely (describe the person or property)

and said 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605 was used to transport an eagle in violation of 16 USC 668 and is subject to forfeiture pursuant to 16 USC 668.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to seize on or before March 26, 1993 (not to exceed 10 days) the person or place

named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to U.S. Magistrate Robert Holter as required by law.

March 18, 1993 at 10:00 a.m. at Great Falls, Montana
Date and Time Issued — City and State

Robert Holter, U.S. Magistrate — /s/
Name & Title of Judicial Officer — Signature of Judicial Officer

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

In the Matter of the Seizure One 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605	APPLICATION AND AFFIDAVIT FOR SEIZURE WARRANT Case Number MCR-93-11-GF Became CR-93-46-BLG

I, Rodney C. Hanlon being duly sworn depose and say:
I am a(n) Special Agent, U.S. Fish and Wildlife Service
and have reason to believe that ☐ xxxxxxxxxxxxxxxx
☐ xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

in the _____ District of Montana there is now concealed a certain person or property, namely (describe the person or property)

One 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

That said 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605 was used to transport an eagle

concerning a violation of Title 16 United States Code, Section(s) 668 . The facts to support a finding of Probable Cause are as follows:

See attached supporting affidavit

Continued on the attached sheet and made a part hereof.
☒ Yes ☐ No

Rodney C. Hanlon /s/
Signature of Affiant

Sworn to before me, and subscribed in my presence

March 18, 1993 at 10:00 AM at Great Falls, Montana
Date City and State

Robert Holter, U.S. Magistrate /s/
Name & Title of Judicial Officer Signature of Judicial Officer

AFFIDAVIT FOR SEIZURE WARRANT

Rodney C. Hanlon, Special Agent, U.S. Fish and Wildlife Service, Department of the Interior, being first duly sworn, deposes and states:

1. The affiant has been employed by the United States Fish and Wildlife Service for 20 years, has a Bachelor of Science degree in Wildlife Biology from Washington State University. Affiant has training and experience in the identification of wildlife and conducting wildlife investigation, including eagle poisonings.
2. Since January of 1993, an investigation has been conducted by the United States Fish and Wildlife Service agents, into the poisoning of eagles and other migratory birds on a ranch in Garfield County, Montana.
3. That the United States Fish and Wildlife Service has jurisdiction to enforce the Endangered species Act, 16 USC 1531 et seq., the Eagle Protection Act, 16 USC 668, and the Migratory Bird Treaty Act, 16 USC 703-707 within the United States.
4. The under 16 USC 668(b) vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bald or golden eagle in violation of 16 USC 668 to 16 USC 668d, shall be subject to forfeiture to the United States.
5. On January 26, 1993, affiant received information that Mike Moore, Warden Sgt., Montana Department of Fish, Wildlife and Parks, Miles City, Montana interviewed two former employees of Paul Berger. Berger operates a sheep ranch near Sand Springs, Garfield County, Montana. Both employees had knowledge that Berger uses poisons to kill eagles on the ranch. Dead eagles, and poisons were observed in two of Berger's vehicles.

6. On February 5, 1993, affiant and Special Agent Rick Branzell interviewed Vernon Austin. Austin worked for Paul Berger on the Berger Ranch from October of 1989 through March 25, 1990. During this time, Austin saw three dead eagles on the Berger Ranch. Austin was aware poisons and coyote getters were utilized on the ranch.
7. Near the end of December of 1989, Austin and Berger were driving on the Berger Ranch. Austin observed a bald eagle perched on a lamb carcass. Berger advised Austin he would come up and put some "dope" on the carcass and take care of the eagle.
8. In mid February of 1990, Austin saw a dead adult bald eagle in the back of Berger's red Chevrolet pickup. The bird was under a set of tire chains. Austin saw the bird's white head.
9. Austin further stated in March of 1990, another ranch hand found a dead golden or juvenile bald eagle on the Berger Ranch. Berger took this bird from the ranch hand. Berger said he was going to get rid of it. Austin observed Berger take the eagle from the ranch hand, throw the eagle in the back of his red Chevrolet pickup, and drive off.
10. On February 18, 1993, Shirley Squire, Legal Assistant in Billings, Montana ran an inquiry into all vehicles owned by Paul Berger.
11. On February 26, 1993, affiant received the results of the motor vehicle inquiry from the Registrar's Bureau in Deer Lodge, Montana. It shows a 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605 is registered to Paul W. Berger, General Delivery, Sand Springs, Montana.
12. On March 15, 1993, affiant requested a records check to be conducted by the Permits Examiner, U.S.F.W.S., Denver, Colorado. The examination revealed that Paul W. Berger does not have a permit or authorization by the U.S. Fish and Wildlife Service to take, possess, or transport bald or golden eagles.

13. Based on the aforementioned parts and the experience of this agent, said 1988 Chevrolet truck, red in color, Montana license plate 50T 3493, VIN 1GCGK34J1JE172605 is part of past criminal violations (16 USC 668) and thus subject to forfeiture pursuant to 16 USC 668b.
12. [sic] The information contained in this affidavit is known to the affiant through an interview of Vernon Austin and discussion with Warden Sgt. Mike Moore.

/s/
Rodney C. Hanlon, Special Agent
U.S. Fish and Wildlife Service

Sworn to before me, and subscribed in my presence, this 18th day of March 1993.

/s/
Robert Holter, U.S. Magistrate
United States District Court
District of Montana

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

In the Matter of the Seizure of	)
One 1988 Chevrolet Truck, Red	)
in Color, Montana License	) No. MCR-93-11-GF
Plate 50T 3493, VIN	)
1GCGK34J1JE17205 [sic]	)

IT IS ORDERED that the above-captioned file is hereby unsealed.

DONE AND DATED this 2nd day of April 1993.

/s/
ROBERT M. HOLTER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

PAUL W. BERGER and ERMA R. BERGER Plaintiffs, vs. RODNEY C. HANLON, JOEL SCRAFFORD, RICHARD C. BRANZELL, ROBERT PRIEKSAT, KRIS A. McLEAN, TURNER BROADCASTING SYSTEMS, INC., a Georgia corporation, ROBERT RAINEY, and DONALD HOOPER, Defendants.	) Case No. CV 95-046-BLG-JDS)) FIRST AMENDED COMPLAINT) FOR DAMAGES FOR THE) VIOLATIONS OF THE UNITED) STATES CONSTITUTION) (FOURTH AMENDMENT),) CONSPIRACY, TRESPASS,) INTENTIONAL INFLICTION OF) EMOTIONAL DISTRESS,) CONVERSION, FOR) DECLARATORY JUDGMENT) AND INJUNCTION, AND) FEDERAL WIRETAP STATUTE) DEMAND FOR JURY TRAIL

COMPLAINT

Plaintiffs Paul W. Berger and Erma R. Berger, by and through their attorneys of record, Jay F. Lansing and Charles F. Moses of the Moses Law Firm, and Henry H. Rossbacher of Rossbacher & Associates, complain against the defendants and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action against Rodney C. Hanlon, Joel Scrafford, Richard C. Branzell, Robert Prieksat, Kris A. McLean, Turner Broadcasting Systems, Inc., Robert Rainey, and Donald Hooper.

2. Plaintiffs seek monetary and punitive damages for constitutional violations including invasion of Fourth Amendment rights and privacy arising under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), violation of the Federal wiretapping

statute 18 U.S.C. § 2510, et seq., as well as common law claims of trespass, emotional distress, and declaratory judgment and an injunction. Plaintiffs' claims arise from the unauthorized invasion of their private property by Cable News Network, Inc. and Turner Broadcasting Systems, Inc. and their camera crew, for the unauthorized videotaping, recording and broadcasting of the execution of a search warrant on plaintiffs' private property by Special Agents of the Fish and Wildlife Service of the United States Department of the Interior, along with Refuge Officers of the Fish and Wildlife Service of the United States Department of the Interior, as well as other agents of the United States Bureau of Land Management of the Department of the Interior, Montana Department of Fish, Wildlife and Parks, and Montana Department of Agriculture.

3. This action seeks to prevent and redress the deprivation of the rights, privileges and immunities secured by the United States Constitution and the Amendments thereto and the laws of the United States, the State of Montana and common law principles, and to obtain recovery for damages proximately caused by defendants in so violating those rights, laws and principles.

4. Plaintiffs bring the following claims:

I. Fourth Amendment Violation (Search and Seizure; Privacy) against defendants Turner Broadcasting Systems, Inc., Robert Rainey, Donald Hooper, and defendant agents Rodney C. Hanlon, Joel Scrafford, Rick Branzell, Robert Prieksat and AUSA Kris A. McLean;

II. Conspiracy to Violate the Fourth Amendment against all defendants;

III. Trespass against defendants Turner Broadcasting Systems, Inc., Robert Rainey, Donald Hooper and AUSA Kris A. McLean;

IV. Conversion against defendants Turner Broadcasting Systems, Inc., Robert Rainey and Donald Hooper;

V. Intentional Infliction of Emotional Distress against defendants Turner Broadcasting Systems, Inc., Robert Rainey and Donald Hooper;

VI. Declaratory Judgment against all defendants;

VII. Injunction against defendants Turner Broadcasting Systems, Inc., Robert Rainey and Donald Hooper; and

VIII. Violation of the Federal wiretapping statute, 18 U.S.C. § 2511, against defendants Turner Broadcasting Systems, Inc., Robert Rainey and Donald Hooper.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 insofar as a substantial question of Federal Law is involved arising under the United States Constitution, in particular the Fourth Amendment thereto.

6. This Court also has supplemental jurisdiction over the state law claims arising under the laws of the State of Montana and common law principles pursuant to 28 U.S.C. § 1367(a) insofar as the state law claims are transactionally related to other claims in this action that are within this Court's original jurisdiction, such that they form a part of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391 insofar as it is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

8. While there is no jurisdictional amount required in connection with 28 U.S.C. §§ 1331 and 1367(a), the amount in controversy, exclusive of interest and costs, exceeds the sum of $50,000.00.

PARTIES

9. Plaintiff Paul W. Berger is a resident of Garfield County, Montana and the husband of plaintiff Erma R.

Berger. Mr. Berger is a cattle and sheep rancher on certain real property located within Garfield County, Montana.

10. Plaintiff Erma R. ("Rosie") Berger is a resident of Garfield County, Montana and the wife of plaintiff Paul W. Berger. Mrs. Berger is a cattle and sheep rancher with her husband on certain real property located within Garfield County, Montana. Plaintiffs Paul R. Berger and Erma R. Berger will hereinafter collectively be referred to as "plaintiffs" or "the Bergers."

11. Cable News Network, Inc. ("CNN"), on information and belief, is a Georgia corporation and authorized to and doing business in the State of Montana. CNN's principal place of business is in Atlanta, Georgia, which is the same as defendant Turner Broadcasting Systems, Inc. At all times relevant to this complaint, CNN was acting as an agent for Turner Broadcasting Systems, Inc. and its affiliates, and was and is engaged in the business of broadcasting entertainment and news and information programs over cable television throughout the United States and abroad, either directly or through its affiliates and has sufficient minimum contacts within this judicial district.

12. Defendant Turner Broadcasting System, Inc. ("TBS"), on information and belief, is a Georgia corporation and is authorized to and doing business in the State of Montana. TBS' principal place of business is in Atlanta Georgia, which is the same as defendant CNN. At all times relevant to this complaint, TBS was acting as an agent for CNN and its affiliates, and was and is engaged in the business of broadcasting entertainment and news and information programs over cable television throughout the United States and abroad, either directly or through its affiliates and has sufficient minimum contacts within this judicial district.

13. Jack Hamann ("Hamann"), on information and belief and at all times relevant to the allegations of this

Complaint, was employed by or acting as an agent of CNN as a correspondent for CNN's Environment Unit.

14. Defendant Robert Rainey ("Rainey"), on information and belief and at all times relevant to the allegations of this Complaint, was employed by or acting as an agent of CNN as a camera operator for CNN's Environment Unit. Defendant Rainey is sued individually and as an agent, servant or employee of CNN and TBS, and in his official capacity. Upon information and belief defendant Rainey is a resident of the State of Georgia.

15. Defendant Donald Hooper ("Hooper"), on information and belief and at all times relevant to the allegations of this Complaint, was employed by or acting as an agent of CNN as an audio technician for its Environment Unit. Defendant Hooper is sued individually and as an agent, servant or employee of CNN and TBS, and in his official capacity. Upon information and belief defendant Rainey is a resident of the State of Georgia.

16. CNN, TBS, Hamann, Rainey and Hooper will hereinafter collectively be referred to as the "CNN Defendants" or, alternatively, defendants Rainey and Hooper will be referred to as the "CNN Camera Crew."

17. Defendant Rodney C. Hanlon ("Hanlon"), on information and belief and at all times relevant to the allegations of this Complaint, was and is a Special Agent of the United States Fish and Wildlife Service of the Department of the Interior, and duly appointed at law and acting as such. He is sued in his individual capacity and as an agent of CNN, TBS, Hamann, Rainey and Hooper. Upon information and belief and at all times relevant to the allegations of this Complaint, defendant Hanlon was a resident of the State of Montana.

18. Defendant Joel Scrafford ("Scrafford"), on information and belief and at all times relevant to the allegations of this Complaint, was and is a Special Agent of the United States Fish and Wildlife Service of the

Department of the Interior, and duly appointed at law and acting as such. He is sued in his individual capacity and as an agent of CNN, TBS, Hamann, Rainey and Hooper. Upon information and belief and at all times relevant to the allegations of this Complaint, defendant Scrafford was a resident of the State of Montana.

19. Defendant Richard C. Branzell ("Branzell"), on information and belief and at all times relevant to the allegations of this Complaint, was and is a Special Agent of the United States Fish and Wildlife Service of the Department of the Interior, and duly appointed at law and acting as such. He is sued in his individual capacity and as an agent of CNN, TBS, Hamann, Rainey and Hooper. Upon information and belief and at all times relevant to the allegations of this Complaint, defendant Branzell was a resident of the State of Montana.

20. Defendant Robert Prieksat ("Prieksat"), on information and belief and at all times relevant to the allegations of this Complaint, was and is a Special Agent of the United States Fish and Wildlife Service of the Department of the Interior, and duly appointed at law and acting as such. He is sued in his individual capacity and as an agent of CNN, TBS, Hamann, Rainey and Hooper. Upon information and belief and at all times relevant to the allegations of this Complaint, defendant Prieksat was a resident of the State of Montana.

21. The United States Fish and Wildlife Service of the Department of the Interior will hereinafter alternatively be referred to as "the Service."

22. Defendant Kris A. McLean ("AUSA McLean"), on information and belief and at all times relevant to the allegations of this Complaint, was and is an Assistant United States Attorney for the District of Montana in the Office of the United States Attorney in Helena, Montana ("U.S. Attorney"), duly appointed and acting as such. He is sued in his individual capacity and as an agent of CNN, TBS,

Hamann, Rainey, Hooper, the Service and defendant Special Agents Hanlon, Scrafford, Branzell and Prieksat. Upon information and belief and at all times relevant to the allegations of this Complaint, defendant McLean was a resident of the State of Montana.

23. Defendant Special Agents Hanlon, Scrafford, Branzell and Prieksat will hereinafter alternatively be referred to as "Special Agents," "Agents," or "Government Agents" or collectively with defendant McLean as the "Government Defendants."

24. In committing the acts and in failing and omitting to act as hereafter alleged, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, were acting with the implied and actual permission and consent of the United States Fish and Wildlife Service of the Department of the Interior and United States Attorney for the District of Montana.

25. In committing the acts and in failing and omitting to act as hereafter alleged, defendants Hanlon, Scrafford, Branzell and Prieksat, were acting in their capacity as officers and employees of the United States Fish and Wildlife Service of the Department of the Interior.

26. In committing the acts and in failing and omitting to act as hereafter alleged, defendant McLean was acting in his capacity as an officer and employee of the Office of the United States Attorney for the District of Montana of the United States Department of Justice.

27. Each of the defendants may be legally responsible for the acts and omissions of the other defendants under recognized legal theories.

28. At all relevant times, defendants, and each of them, acted jointly and in concert, and were acting as the agents, servants and collaborators of each of the other defendants, and were acting with the full knowledge and consent, either express or implied, of each of the other defendants.

PRELIMINARY ALLEGATIONS

29. Plaintiff Rosie Berger was born on April 15, 1911, and has lived her entire life on her property in Garfield County, Montana. Plaintiff Paul W. Berger was born on April 7, 1921, and has been a resident of Garfield County, Montana for approximately seventy (70) years.

30. Plaintiffs are in possession of certain real property known as "the Berger Ranch" located north of Sand Springs in Garfield County, Montana. The entire property is owned and leased by Mr. Berger and/or Mrs. Berger. The house in which plaintiffs reside is located on the Berger Ranch in Section 31 of Township 18 North, Range 33 East, M.P.M., surrounded by various outbuildings. During all times relevant to the allegations in the Complaint, plaintiffs had and continue to have a reasonable expectation of privacy over the entire Berger Ranch, including the residence and outbuildings.

31. At all times relevant to the allegations of this Complaint, Mrs. Berger was not under investigation by law enforcement authorities and was neither charged nor convicted of any crime. No evidence of any complicity in any crime by Mrs. Berger was found as a result of the activities of the defendants at issue in this suit.

32. Within days before the execution of the search warrant at the Berger Ranch, plaintiffs had just been released from the hospital and were both recuperating from serious illnesses. At the time of the search, Mr. Berger was on medication and oxygen. Defendants were repeatedly warned prior to executing the search warrant that plaintiffs were both in very poor health. Due to their advanced age and serious illnesses, plaintiffs are protective of their solitude and privacy.

BACKGROUND ALLEGATIONS

33. This Complaint arises from unconstitutional acts involving the use of private property as a soundstage for the intruding eye and ear of the media whose access was planned

and compelled by the Government Defendants under the auspices of a search warrant. The CNN Camera Crew that entered the private property to be searched by the Government Agents did so to seize images of the property and residents and the latters' oral statements for broadcast to the world and for financial profit -- not for any legitimate law enforcement purpose related to execution of the search warrant. The illegal presence of the media on private property and the ensuing repeated illegal seizures were achieved through the concerted, deceptive actions of the Government Defendants and the CNN Camera Crew, TBS and CNN, who conspired to further their own private interests by turning a law enforcement operation into a titillating media event.

34. In early 1993, agents of the Service were approached by CNN because CNN wanted to accompany the agents to videotape the execution of a search warrant related to a confidential criminal investigation. The investigation of the Berger Ranch was initiated by the Service in or about January 1993 after disgruntled former employees of the Bergers made uncorroborated allegations that they saw Mr. Berger poison or shoot eagles in 1989 to 1991. CNN wanted live action footage to broadcast on the "Earth Matter" and "Network Earth" environmental programs for CNN and TBS. CNN and the Government Agents determined that it was in their respective interests to obtain national and international coverage of their endeavors and they agreed to cooperate.

35. In furtherance of the Government Agents' decision to cooperate with the media and involve the media in the criminal investigation, the agents introduced CNN to defendant AUSA McLean. In violation of Department of Justice regulations, AUSA McLean, on behalf of the U.S. Attorney wrongfully agreed to provide CNN with secret information from both the U.S. Attorney and the Service regarding the pending criminal investigation. AUSA McLean executed a written agreement to permit the agents to misuse

their authority under the expected search warrant to take the media onto private property and to violate plaintiffs' rights.

36. The agreement was memorialized and circulated in materials distributed within CNN two (2) weeks before the search warrant was applied for and obtained.

37. The executed letter agreement ("Letter Agreement"), between defendant AUSA McLean on behalf of the U.S. Attorney and the Service and Hamann on behalf of CNN and TBS, was dated March 11, 1993 and provides, in pertinent part, that:

> This confirms our agreement that the United States Attorney's Office for the District of Montana agrees to allow CNN to accompany USFWS agents as they attempt to execute a criminal search warrant near Jordan, Montana, sometime during the week of March 22, 1993. . . .

The letter was executed by defendant AUSA McLean and Hamann. A true and correct copy of the executed Letter Agreement is attached hereto as Exhibit "A."

38. Under the Letter Agreement, defendant AUSA McLean, on behalf of the U.S. Attorney and the Service, gave permission to CNN, its employees, and agents to enter the Berger Ranch under the authority of the search warrant. The presence of the CNN Camera Crew was not necessary for the execution of the search warrant. CNN's Legal Department was provided with a copy of the Letter Agreement.

39. The CNN Defendants planned and organized their participation with the Government Defendants in the search of the Berger Ranch prior to the issuance and execution of the search warrant. This plan was outlined in a March 11, 1993, CNN Network Earth/Earth Matters "Producer Package Checklist: Story Set-Up Packet" ("Story Set-Up"), prepared by Hamann, who is identified as the correspondent, along with associate producer Susan Olson, photographer Rob Rainey, and tech Don Hooper.

40. With permission from and cooperation by defendant AUSA McLean and other representatives of the Service, CNN Defendants planned to videotape and record the execution of the search warrant from which to obtain useful "sound bites." The focus of the CNN story was to disclose the alleged poisoning of endangered species, such as eagles, by ranchers who claimed to be protecting their livestock from predators. CNN planned to use the elderly Bergers to illustrate these acts, casting them unwittingly in the role of inhumane barbarians for the purpose of broadcasting a derogatory portrayal for all the world to see. The Berger Ranch was chosen as the soundstage and backdrop for the broadcast by CNN and TBS.

41. All of this information was deliberately concealed from the United States Magistrate Judge, the independent judicial officer who was presented with the Application and Affidavit in support of the search warrant. The Application and Affidavit were submitted by defendant agent Hanlon for approval to the Magistrate Judge well after the Letter Agreement was executed by AUSA McLean and CNN.

42. The Letter Agreement and the defendants' ensuing actions undertaken to implement the agreement violated the Fourth Amendment of the Constitution proscribing unreasonable searches and seizures, and Federal statutes implementing that constitutional provision. 18 U.S.C. § 3105 mandates that only authorized officers or others necessary to aid them may serve or execute a search warrant. Federal Rule of Criminal Procedure 41 provides that a warrant is to be issued only to a "civil officer" of the United States Government.

43. The Letter Agreement and the defendants' ensuing actions further violate Department of Justice (DOJ) Regulations which drastically limit the media's access to information about on-going criminal investigations.

44. Defendants' actions described below further violated Montana law creating common law causes of action

for trespass, conversion and intentional infliction of emotional distress.

45. On or about March 18, 1993, at 9:55 a.m., the Magistrate Judge issued a search warrant to defendant Special Agent Hanlon authorizing him and other Special Agents of the Service to search:

The Paul W. Berger Ranch with appurtenant structures, excluding the residence. The warrant authorized defendant agent Hanlon and the others so authorized to search for the following items:

> Documents, records, coyote getters, cyanide charges, chemicals, livestock carcasses and wildlife carcases, including eagles, which would document the taking of wildlife in violation of Federal laws (16 USC 668, 16 USC 703, and 16 USC 1538).

46. The warrant authorized a search of only Mr. Berger's deeded lands described in Attachment 1 to the Application and Affidavit of defendant agent Hanlon; this comprises only about 5,000 acres, while the search covered almost the entire Berger Ranch of as much as 75,000 acres.

47. On or about March 18, 1993 at 10:00 a.m., the Magistrate Judge also issued two (2) Seizure Warrants, for Mr. Berger's 1988 and 1990 Chevrolet trucks, which both Seizure Warrants Application alleged were used to "transport an eagle in violation of 16 USC 668 and is subject to forfeiture pursuant to 16 USC 668."

48. The warrants were issued specifically to defendant agent Hanlon in his official capacity. He was the Special Agent acting as the case coordinator and in charge of the execution of the search warrant on the morning of March 24, 1993, by himself and other authorized agents of the Service, to search plaintiffs' ranch, excluding the residence, for the specific items listed in the warrant. Defendant agent Hanlon had been assigned as the case coordinator by his supervisor, defendant agent Scrafford.

49. The CNN Defendants were permitted to attend, participate in and videotape and record the pre-search briefing on or about March 23, 1993. Defendant agent Hanlon, acting as project coordinator of the search of the Berger Ranch, code-named "Operation Dope," conducted the briefing. All or most of the individuals who participated in the search of the Berger Ranch on March 24, 1993 attended this briefing, including defendant agents Scrafford, Branzell and Prieksat, and defendant AUSA McLean. Other Federal and State agents in attendance included approximately seven (7) Refuge Officers of the Service, approximately three (3) wardens with Montana State Fish and Game, and one (1) agent of the Federal Bureau of Land Management ("BLM"). The CNN Defendants were also presents.

50. Defendant agent Hanlon announced at the briefing that the CNN Defendants were present. The Government Defendants as well as the remaining Federal and State agents in attendance at the briefing permitted the videotaping and recording of the briefing by the CNN Defendants. The Government Defendants along with the CNN Defendants, planned, arranged and made it possible for the CNN Defendants to attend the videotape and record the briefing.

51. Defendant AUSA McLean conducted a portion of the pre-search briefing to address the legal aspects of the case and he and the other Government Defendants disclosed confidential information about the Bergers and the pending criminal investigation to the CNN Defendants.

52. The Government Defendants and other agents at the briefing discussed plans for the CNN Defendants to accompany them the following day to videotape and record the execution of the search warrant at the Berger Ranch.

53. The Government and CNN Defendants deliberately planned to deceive the Bergers by concealing the presence and identity of the CNN Defendants at the Berger Ranch during the execution of the search warrant. They discussed whether there was something to call Hamann and the CNN

Camera Crew other than "CNN" to avoid alerting Mr. Berger as to their real identify.

54. Defendant Branzell conducted a portion of the briefing to address the poisons and chemicals being sought under the search warrant. He also reiterated to those present that the search warrant did not include the residence and that it would not be searched because Mr. Berger did not store any poisons in the residence.

55. At approximately 6:00 a.m. on or about March 24, 1993, the "Operation Dope" raid team gathered on the county road leading to the Berger Ranch to discuss the execution of the search warrant. The raid team included defendant AUSA McLean (wearing "Federal Agent" emblazoned on the back of his jacket, an ATF baseball cap, and smoking a cigar), defendant agents Hanlon, Scrafford, Branzell and Prieksat, as well as the other Federal and State agents participating in the execution of the search warrant. All or most of these individuals had attended the pre-search briefing.

56. The raid team was accompanied by Hamann and the CNN Camera Crew, acting within the course and scope of their employment for CNN. The CNN Camera Crew videotaped and recorded this gathering.

57. Armed with the warrants and weapons, the defendants and the other Federal and State agents then proceeded in a caravan of approximately ten (10) vehicles to a point on the county road near the Berger Ranch where they were met by a pickup truck driven by Mr. Berger. The caravan was videotaped from the interior of one of the vehicles by a videocamera held by one of the CNN Camera Crew. Another CNN camera was mounted to the exterior of a government vehicle driven by defendant agent Scrafford (and later by defendant agent Branzell), which also videotaped the caravan proceeding down the road. Defendant agent Scrafford was "wired up" with a hidden microphone and transmitter which broadcast audio signals to the CNN Defendants.

58. Upon meeting with Mr. Berger in his pickup truck, the caravan stopped. Defendant agents Scrafford and Branzell exited their vehicle and approached Mr. Berger sitting behind the wheel of his truck. Mr. Berger was then advised that a search warrant was about to be executed at the Berger Ranch. Contrary to the restrictions of the warrant, Mr. Berger was told that the warrant required the search of every building on the ranch. He was not informed abut the seizure warrants.

59. Defendant agents Scrafford, Branzell and Prieksat immediately began interrogating Mr. Berger with leading questions about his alleged use of illegal poisons to bait carcasses, illegal coyote getters, and killing the eagles. Mr. Berger was not advised of his right against self-incrimination at any time during March 24, 1993.

60. Defendant agent Scrafford asked Mr. Berger if he could ride in Mr. Berger's pickup truck back to the Ranch under the pretext that he should explain the situation to Mrs. Berger upon entering the Berger Ranch. The caravan, now including Mr. Berger's truck with defendant agent Scrafford in the passenger seat, resumed its morning procession down the county road and onto the Berger Ranch.

61. Defendant agent Scrafford deliberately concealed and failed to inform Mr. Berger that he was wearing a hidden CNN microphone and that everything Mr. Berger said was being monitored and recorded by the CNN Defendants. Defendant agent Scrafford also deliberately concealed the presence of CNN personnel and the fact that the video camera were those of CNN.

62. Meanwhile, defendant agent Branzell radioed to the other agents that they would have to search "real hard for evidence" of illegal poisoning because Mr. Berger indicated that he had just been released from the hospital within ten days, was bedridden for the last five months, and had no bait stations out. Mrs. Berger, who was also in poor health, had just been released from the hospital a week before the

execution of the search warrant. Mr. Berger was on oxygen and medication.

63. The conversation between Mr. Berger and defendant agents Scrafford, Branzell and Prieksat on the county road and then inside Mr. Berger's pickup truck was not only broadcast by the hidden microphone worn by defendant agent Scrafford, it was videotaped by the CNN Camera Crew. The existence and use of both the hidden microphone and videocamera were not disclosed to Mr. Berger. His conversation was recorded and videotaped without his knowledge or consent. Had Mr. Berger known that defendant agent Scrafford was wearing a microphone, he would have asked him to remove the microphone. Had Mr. Berger known that CNN and the CNN Defendants were videotaping, he would have asked them to leave.

64. Defendants AUSA McLean, agents Hanlon and Scrafford authorized or made it possible for defendant agent Scrafford to wear the concealed microphone which was monitored and recorded by CNN and the CNN Defendants.

65. The Berger residence was specifically excluded from the search warrant. Yet, upon entry onto the Berger Ranch, defendant agents Scrafford and Branzell entered the plaintiffs' residence with Mr. Berger. Conversations inside the residence between defendant agents Scrafford and Branzell and the Bergers were broadcast by agent Scrafford's hidden microphone and recorded by the CNN Defendants. These conversations were recorded by agent Scrafford and the CNN Defendants without the Bergers' knowledge or consent. Had the Bergers known that agent Scrafford was wearing a microphone, they would have asked him to remove the microphone and leave the residence.

66. Mrs. Berger was not advised of her right against self-incrimination at any time during March 24, 1993.

67. The entire 75,000 acre Berger Ranch was searched on land and by air for approximately eight hours. During said period of time, the CNN Defendants made up to eight

more hours of videotape and recordings, which included conversations with Mr. and Mrs. Berger inside the residence, of Mr. Berger inside the outbuildings and outside at various locations throughout the Ranch, as well as interviews with defendant AUSA McLean and other Government Defendants.

68. At one point inside an outbuilding on the Berger Ranch, Mr. Berger discovered the videocamera and protested about being filmed. To avoid a confrontation, Hamann deftly directed the camera to shoot the contaminants team across the room while the Government Defendants diverted Mr. Berger's attention by bombarding him with conversation and leading questions about using poisons. Defendant's failure to identify Hamann and the CNN Camera Crew was deliberate and deceitful.

69. The local sheriff was not advised in advance about the execution of the search warrant at the Berger Ranch. Mrs. Berger was allowed to call the sheriff only after defendant agents Scrafford and Branzell entered the Berger residence. When deputy sheriffs finally arrived, defendant agent Hanlon advised them of the number of Federal and State agents involved, but deliberately withheld informing them that the CNN Defendants were on the Berger Ranch.

70. Plaintiffs reasonably believed that the CNN Defendants were law enforcement agents executing the search warrant. Everyone involved in the search wore "street" clothes; some, but not all, wore jackets with "Federal Agent" printed on the back; and some wore yellow protective clothing over their street clothes.

71. Plaintiffs were never advised by the Government Defendants that the CNN Defendants were on the Berger Ranch. Nor did the CNN Defendants identify themselves to plaintiffs. Plaintiffs never gave permission to be videotaped or recorded. Had they known that Hamann and the CNN Camera Crew were not an authorized part of the raid team, they would never have allowed them onto the Berger Ranch and would never had allowed them to videotape and record

any conversations. Had plaintiffs understood the nature of the ensuing events, they would have demanded that the CNN Defendants stop and leave the Berger Ranch.

72. Notwithstanding the lack of permission, the CNN Defendants remained at the Berger Ranch, entered various outbuildings, freely moved throughout various locations on the Berger Ranch, and videotaped and recorded the execution of the search warrant.

73. The warrant only authorized a search of the Berger Ranch, not personal use of the plaintiffs' property by the defendants. Yet, the CNN Camera Crew freely followed and videotaped and recorded the Government Defendants and agents executing the search warrant while Hamann interviewed the Government Defendants about rogue ranchers who illegally kill eagles, in general, and specifically solicited comments about Mr. Berger.

74. Defendant AUSA McLean, who was the Assistant United States Attorney in charge of the criminal investigation, was one of several defendants interviewed by Hamann for the CNN camera during the search. McLean pontificated by issuing a verbal indictment against Mr. Berger to create a CNN sound bite:

> It's not right that a select few people, like . . . uh, this case, can deprive the rest of us seeing a bald eagle swooping down and taking a salmon out of a stream. You can't put a price on that.
>
> * * *
>
> A lot of this, uh, I think is, uh, just that mentality that it's almost a God-given right to control predators. Even, uh, regardless if they're actually taking lambs. I think that's the situation we have here. You've seen Mr. Berger earlier, that's his attitude. It's a -- it's a God-given right to do it.

75. At the time of the interview, no formal criminal charges had yet been brought against Mr. Berger. Defendant AUSA McLean justified the interview on the grounds that

publicity would deter future conduct by other "rogue" ranchers. McLean also highlighted his background in wildlife biology and noted his desire to prosecute carcass-bating cases as doing his "bit" for the environment.

76. Defendant AUSA McLean and the other Government Defendants caused the execution of the search warrant on the Berger Ranch to be videotaped and recorded for the purpose of facilitating CNN and TBS' publishing all or part of the video footage and sound recordings for CNN and TBS programs entitled "Earth Matters" and "Network Earth," and selling all or part of the video and sound footage to other programming affiliates or enterprises including cable, television or film programs.

77. Other Government Defendants were also interviewed on camera. Each contributed through interviews or actions on camera to the production of the CNN segment.

78. The CNN Defendants used the videotape and recordings made during the execution of the search warrant on the Berger Ranch to prepare a program segment that was to be used for broadcast. The segment included footage of the secretly recorded conversations between Mr. Berger and the Government Defendants (including conversations on defendant agent Scrafford's secret microphone), video footage of the interiors of the buildings on the Berger Ranch and of various locations on the Berger Ranch property, and footage of this "raid" and execution of the search warrant upon the Berger Ranch.

79. On May 5, 1993, Mr. Berger was charged under a four count information of violating Federal laws (three counts of "taking" [killing] at least seventeen (17) eagles and one count of violating the Federal Pesticides Control Act).

80. There was no evidence found during the execution of the search warrant on the Berger Ranch that Mr. Berger had killed eagles. The Service's forensic laboratory determined that the "feathers and a few bones" collected by the raid team during the search were misidentified and not

eagle remains. The eagle remains that were identified had no evidence of illegal poison in their remains. Finding some eagle remains after a search of 75,000 acres is hardly surprising or incriminating. As a result, the information was amended on August 27, 1993, and the first three counts were amended downward to alleging the taking of at least one (1) eagle.

81. After trial, the jury acquitted Mr. Berger of the charges that he killed eagles. He was found guilty only of a misdemeanor under the fourth count for using a pesticide contrary to its labelling.

82. The segment was broadcast nationally and internationally. It was broadcast by defendant TBS on October 17, 1993, only three days prior to the sentencing of Paul W. Berger before United States Magistrate Richard Anderson on October 20, 1993. TBS broadcast it again on January 30, 1994. CNN Broadcast the segment on October 24, 1993 and February 4, 1994; it was broadcast on CNN1 twice on October 24, 1994 and twice on February 6, 1994. The segment also aired through TNT Latin America on January 15, 1994 and April 10, 1994. Despite Mr. Berger's acquittal, Hamann introduced the segment by implying that Mr. Berger had killed hundreds of federally-protected eagles.

83. A few days before Mr. Berger's sentencing, defendant agent Hanlon sent a letter, on the United States Department of Interior Fish and Wildlife Service stationery, to "All participants in the Paul Berger (INV.4506A0) eagle poisoning investigation," to announce the broadcast schedule for the segment on TBS and CNN. Defendant agent Hanlon gloated that the broadcast would be widespread; exulting in the worldwide dissemination of the unconstitutionally seized audio and video recordings:

> Again, I want to thank each and everyone of you for your assistance in this complex investigation. If I may use the old saying, reference WAITING UNTIL THE FAT LADY SINGS. SHE SANG. HER VOICE JUST WAS

NOT AS LOUD AS WE WOULD HAVE LIKED!!! I will guarantee you though, that the Paul Bergers and non-believers of the world will have a chance to see and hear the truth through the CNN video, not just in Sand Springs, Montana, but the whole WORLD.....Japan, Chile, France, and every place in between.

84. Due to the wrongful actions of TBS, CNN and the CNN Defendants, they have received compensation through the sale of commercials and other compensation, and have thereby been unjustly and unfairly enriched and benefitted as a result of their own wrongful actions.

85. As a direct and proximate result of the search and airing of the program segment about them and the search of the Berger ranch, plaintiffs have suffered extreme distress, humiliation, anguish and embarrassment and fear for their safety and well-being.

86. At no time was there any reasonable cause for the Government and CNN Defendants to believe that plaintiffs consented either to the presence of the CNN Defendants on their Ranch and in their residence, or to videotaping and recording the search of their property and the persons and conversations of Mr. and Mrs. Berger.

87. At no time was there any reasonable cause for the CNN Defendants to believe that plaintiffs consented to the use, sale or distribution of any portion of any videotape or recording made during the execution of the search warrant on the Berger Ranch.

FIRST CAUSE OF ACTION
VIOLATION OF FOURTH AMENDMENT
Search and Seizure; Privacy
(By Plaintiffs against All Defendants)

88. Plaintiffs reallege the allegations of paragraphs 1 through 87 hereinabove and incorporate them by this reference as though fully set forth herein.

89. At all times relevant to the allegations of this Complaint, each and every act alleged herein was done by

and in the name of the United States by defendants AUSA McLean, agents Hanlon, Scrafford, Branzell and Prieksat, individually and through their agents, servants, and representatives, and each of them, under the color and pretenses of the statutes, laws, regulations, customs and usages of the United States.

90. At all times relevant to the allegations of this Complaint, each and every act alleged herein done by CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, were acting by agreement and as joint participants with individual defendants AUSA McLean, defendant agents Hanlon, Scrafford, Branzell and Prieksat, when they trespassed upon plaintiffs' real property and videotaped and recorded the execution of a search warrant by the Government Defendants on plaintiffs' real property for their mutual benefit. Defendants videotaped and recorded the Agents' search of plaintiffs' real and personal property, and the persons and statements of Mr. and Mrs. Berger. In doing so, defendants unlawfully searched and seized private images and statements of plaintiffs in violation of their constitutional rights.

91. The acts of CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, were clearly supported by the power, property and prestige of the Federal Government, and imbued them with the power and prestige of Government officials. As a consequence, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, were acting under the color of the Federal Law and pretenses of the statutes, laws, regulations, customs and usages of the United States.

92. CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, broadcast said videotaped private images and recordings for defendants' own use and

for their own benefit and profit in violation of plaintiffs' privacy.

93. The action against defendant AUSA McLean, defendant agents Hanlon, Scrafford, Branzell and Prieksat and CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, for Fourth Amendment violations under color of Federal Law arises under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and its progeny.

94. Defendant AUSA McLean and defendant agents Hanlon, Scrafford, Branzell and Prieksat are not immune to a civil action for Fourth Amendment violations by Federal officers acting in their official capacity. Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

95. Damages are an appropriate and judicially manageable remedy for an invasion of personal interests in liberty, for the case presents a focused remedial issue without difficult questions of the causation and valuation, and there are no applicable special factors counseling hesitation in the absence of affirmative action by Congress.

96. Pursuant to the illegal Letter Agreement, the Government Defendants facilitated the CNN Defendants' unauthorized entry onto the Berger Ranch, illegal search and seizure of videotaped images and recorded statements, under the imprimatur of a search warrant for no legitimate law enforcement purpose. Private images and statements of Mr. and Mrs. Berger and plaintiffs' personal belongings were improperly seized from plaintiffs through the videotaping and secret recording conducted by the CNN Defendants and the Government.

97. The detention of Mr. and Mrs. Berger during the execution of the search warrant was unreasonable and unjustified.

98. The search warrant was executed in a particularly indiscriminate and offensive manner with unnecessary severity and disregard for plaintiffs' privacy.

99. On or about March 24, 1993, defendant agents Scrafford and Branzell entered the Berger residence which was specifically excluded from the search warrant. Plaintiffs did not give permission to defendant agents Scrafford and Branzell to enter their residence. Had plaintiffs known that the search warrant specifically excluded their residence, they would have ordered defendants Scrafford and Branzell to leave.

100. In addition, defendant agent Scrafford wore a hidden microphone into the Berger residence on behalf of and by agreement with the CNN Defendants. All of the statements made by plaintiffs inside their residence were recorded and monitored by the CNN Defendants through defendant agent Scrafford's hidden microphone. At no time did plaintiffs consent to or give permission to have their conversations recorded. The detention of Mr. and Mrs. Berger inside their residence and recording of their statements without their knowledge or consent was unreasonable and unjustified.

101. Defendant AUSA McLean and defendant agents Hanlon, Scrafford, Branzell and Prieksat, were acting by agreement and as joint participants with, and allowed CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees to trespass upon plaintiffs' property for the purpose of videotaping and recording the execution of a search warrant for their mutual benefit in violation of 18 U.S.C. §§ 2234, 2236, 3105 and 3109. Said actions willfully exceeded the authority of defendant AUSA McLean and defendant agents Hanlon, Scrafford, Branzell and Prieksat in executing the search warrant.

102. Because of the above-recited facts, defendant AUSA McLean, defendant agents Hanlon, Scrafford,

Branzell, Prieksat, and CNN, TBS, Hamann, Rainey and Hooper, and each of them, under the color and pretenses of the statutes, laws, regulations, customs and usages of the United States, deprived plaintiffs of their rights, privileges and immunities secured to them by the United States Constitution, including, but not limited to,

a) Plaintiffs' Fourth Amendment right to privacy and security in their person, house, papers, and effects, to be free against unreasonable searches; and

b) Plaintiffs' right to be free in their person against unreasonable seizure.

103. The actions of each defendant violated plaintiffs' clearly established statutory or constitutional rights of which a reasonable person would have known.

104. The actions of defendants impeded and hindered the course of justice with the intent to deny plaintiffs the equal protection of the laws.

105. As a direct and proximate result of the outrageous and wrongful acts of each of the defendants, plaintiffs suffered extreme indignities and humiliation, severe emotional and physical distress, pain and suffering, mental anguish, loss of liberty and loss of standing in the community, and have been held up to ridicule before their peers.

106. Plaintiffs are entitled to recover any and all actual damage, in a sum to be determined according to proof at trial, proximately caused by the wrongful acts hereinabove complained of and alleged herein.

107. Defendant AUSA McLean, and defendant agents Hanlon, Scrafford, Branzell, Prieksat, and CNN, TBS, Hamann, Rainey and Hooper, and each of them, acted willfully, maliciously, intentionally, oppressively, and in wanton and reckless disregard of plaintiffs' constitutional right and of the possible consequences of their conduct. Accordingly, plaintiffs are entitled to and hereby demand

punitive and exemplary damages by way of punishing and deterring defendants in an amount no less than Ten Million Dollars ($10,000,000.00).

108. The actions of the defendants, jointly and severally, entitle plaintiffs to an award of exemplary and punitive damages.

SECOND CAUSE OF ACTION
CONSPIRACY TO VIOLATE FOURTH AMENDMENT
Search and Seizure; Privacy
(By Plaintiffs against all Defendants)

109. Plaintiffs reallege the allegations of paragraphs 1 through 87 hereinabove and incorporate them by this reference as though fully set forth herein.

110. Defendant AUSA McLean and defendant agents Hanlon, Scrafford, Branzell and Prieksat, acting in their official capacity, are not immune to a civil action for conspiracy to violate the Fourth Amendment under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and its progeny.

111. CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, were acting under the color of Federal Law and the pretenses of statutes, laws, regulations, customs and usages of the United States, in that defendants' acts were clearly supported by the power, property and prestige of the Federal Government, which imbued them with the power and prestige of Government officials. Accordingly, this action for conspiracy to violate the Fourth Amendment under color of Federal Law is actionable under Bivens v. Six Unknown Names Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and its progeny.

112. Damages are an appropriate and judicially manageable remedy for an invasion of personal interests in liberty for the case presents a focused remedial issue without difficult questions of causation and valuation and there are no

applicable special factors counseling hesitation in the absence of affirmative action by Congress.

113. On or about Mach 24, 1993, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and defendant AUSA McLean, defendant agents Hanlon, Scrafford, Branzell and Prieksat, and each of them, knowingly and willfully conspired and agreed among themselves to jointly participate, for their mutual benefit, in the execution of the search warrant in and trespass upon plaintiffs' real property and to videotape and record the Government Defendants' execute the search warrant in violation of plaintiffs' Fourth Amendment rights.

114. Defendant AUSA McLean, defendant agents, Hanlon, Scrafford, Branzell and Prieksat, and CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, did the acts and things herein alleged by videotaping and recording the Federal agents' search of plaintiffs' real and personal property, and the persons and statements of Mr. and Mrs. Berger, pursuant to, and in furtherance of, the conspiracy and above-alleged agreement.

115. Defendant AUSA McLean, defendant agents, Hanlon, Scrafford, Branzell and Prieksat, and each of them, furthered the conspiracy by acting as agents of CNN, TBS, Hamann, Rainey and Hooper, and by ratifying and adopting and aiding the conduct of CNN, TBS, Hamann, Rainey and Hooper, and their agents, servants and employees.

116. Because of the above-recited acts and omissions, defendants, and each of them, acting under the color of Federal law and of statutes, ordinances, regulations, customs and usages of the United States, deprived plaintiffs of their rights, privileges and immunities secured to them by the United States Constitution, including, but not limited to:

a) Plaintiffs' Fourth Amendment right to privacy and security in their person, house, papers and

effects, to be free against unreasonable searches; and

b) Plaintiffs' Fourth Amendment right to be free in their person against unreasonable seizure.

117. As a direct and proximate result of the outrageous and wrongful acts of each defendant, plaintiffs suffered extreme indignities and humiliation, severe emotional and physical distress, pain and suffering, mental anguish, loss of liberty and loss of standing in the community, and have been held up to ridicule before their peers.

118. Plaintiffs are entitled to recover any and all actual damage, in a sum to be determined according to proof at trial, proximately caused by the wrongful acts hereinabove complained of, as alleged herein and according to proof at trial.

119. Each defendant acted willfully, maliciously, intentionally, oppressively, and in wanton and reckless disregard of plaintiffs' constitutional rights and of the possible consequences of their conduct. Accordingly, plaintiffs are entitled to and hereby demand punitive and exemplary damages by way of punishing and deterring defendants in an amount of no less than Ten Million Dollars ($10,000,000.00).

120. The actions of the defendants, jointly and severally, entitle plaintiffs to an award of exemplary and punitive damages.

THIRD CAUSE OF ACTION

Trespass

(By Plaintiffs against Defendants AUSA McLean, TBS, Rainey and Hooper)

121. Plaintiffs reallege the allegations of paragraphs 1 through 87 hereinabove and incorporate them by this reference as though fully set forth herein.

122. At all times relevant to the allegations of this Complaint, plaintiffs, Mr. and Mrs. Berger, owned and

possessed the Berger Ranch, generally located north of Sand Springs, Garfield County, Montana. The Berger Ranch house in which plaintiffs reside is generally located in Section 31 of Township 18 North, Range 33 East, M.P.M., surrounded by various outbuildings, and for which plaintiffs had a reasonable expectation of the privacy.

123. On or about March 24, 1993, AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants, and employees, and each of them, intentionally and unlawfully entered upon the plaintiffs' property with the intent to videotape and record the execution of a search warrant by the United States Fish and Wildlife Service of the Department of Interior.

124. Defendant McLean, an Assistant United States Attorney, was not authorized under the search warrant to enter the Berger Ranch during the execution of the search warrant.

125. AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants, and employees, and each of them, intentionally and unlawfully trespassed upon plaintiffs' property, entered buildings upon the Berger Ranch, traveled throughout and remained upon the Berger Ranch for approximately six to eight hours, videotaped and recorded numerous places and locations upon the Berger Ranch, videotaped and recorded the execution of the Federal search warrant upon the Berger Ranch, and thereafter broadcast the videotape obtained while on the Berger Ranch. Such actions by CNN, TBS, Hamann, Rainey and Hooper took place upon the real property owned and possessed by plaintiffs.

126. At no time did AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, identify themselves as anyone other than Government representatives present for the purpose of executing the search warrant.

127. At no time did plaintiffs consent to or authorize AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, or

their agents', servants' and employees' entry and presence in plaintiffs' real property or the videotaping and recording of plaintiffs' real and personal property and the persons of Mr. and Mrs. Berger.

128. The trespass by AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, onto plaintiffs' real property, as well as their subsequent failure to stop videotaping and recording, was intentional and in reckless and willful disregard of plaintiffs' rights.

129. As a direct and proximate result of the trespass by AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, plaintiffs have suffered actual and consequential damages including, but not limited to, damage to real property, emotional distress, embarrassment, humiliation and loss of privacy. Plaintiffs' are entitled to recover for damage to the premises and other actual damages, including, but not limited to, severe mental anguish, severe emotional and physical distress, pain and suffering, and humiliation and embarrassment, to be determined and according to proof at trial. The amount of the damages will be to compensate for all detriment proximately caused thereby.

130. As a result of the wrongful actions of AUSA McLean, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, said defendants are guilty of actual malice pursuant to Section 27-1-221, MCA, due to the defendants having knowledge of facts or intentionally disregarding facts that create a high probability of injury to the plaintiffs and deliberately proceeded to act in conscious or intentional disregard of the high probability of the injury to the plaintiffs or deliberately proceeded to act with indifference to the high probability of injury to the plaintiffs. Consequently, plaintiffs are entitled to and hereby demand

punitive and exemplary damages by way of punishing and deterring defendants, pursuant to Section 27-1-221, MCA, in an amount of no less than Ten Million Dollars ($10,000,000.00).

131. The actions of the defendants jointly and severally, entitle plaintiffs to an award of exemplary and punitive damages.

FOURTH CAUSE OF ACTION

Conversion

(By Plaintiffs against Defendants TBS, Rainey and Hooper)

132. Plaintiffs reallege the allegations of paragraphs 1 through 87 hereinabove and incorporate them by this reference as though fully set forth herein.

133. At all times relevant to the allegations of this Complaint, plaintiffs, Mr. and Mrs. Berger, owned and possessed the Berger Ranch, generally located north of Sand Springs, Garfield County, Montana. The Berger Ranch house in which plaintiffs reside is generally located in Section 31 of Township 18 North, Range 33 East, M.P.M., surrounded by various outbuildings, and for which plaintiffs had a reasonable expectation of privacy.

134. On or about March 24, 1993, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, intentionally and unlawfully entered plaintiffs' Ranch and without consent or permission, wrongfully seized, took and appropriated, by means of videotape and sound recording, private images of plaintiffs, their premises and possessions and plaintiffs' statements, including, but not limited to, images of Mr. Berger, sound recordings of Mr. and Mrs. Berger responding to the agents or reacting to their presence with the CNN Camera Crew, and images of their personal and real property.

135. CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, converted said private images

and recordings into a videotape for defendants' own use and for their own benefit and profit.

136. As a direct and proximate result of said conversion, plaintiffs have been damages in an amount to be determined according to proof at trial.

137. The acts of CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, were oppressive and malicious. Accordingly, plaintiffs are entitled to and hereby demand punitive and exemplary damages by way of punishing and deterring defendants in an amount of no less than Ten Million Dollars ($10,000,000.00).

138. The actions of the defendants, jointly and severally, entitle plaintiffs to an award of exemplary and punitive damages.

FIFTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(By Plaintiffs against Defendants TBS, Rainey and Hooper)

139. Plaintiffs reallege the allegations of paragraphs 1 through 87 hereinabove and incorporates them by this reference as though fully set forth in this paragraph.

140. On or about March 24, 1993, CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, intentionally and without permit or license or the consent of plaintiffs, trespassed upon and entered the Berger Ranch and without provocation, in a malicious, rude, and insolent manner, menaced, intimidated and threatened plaintiffs emotionally and physically by their presence and with their camera equipment.

141. Defendants knew or should have known that an elderly man and woman in poor health would be extremely distressed, upset, and disoriented while approximately twenty strange individuals ransacked through their real and personal property, interrogated them, and would suffer emotional and physical distress. Defendants also knew that their entry onto

the Berger's home, exacerbated by their surreptitious eavesdropping and recording of Plaintiffs' conversations and the subsequent broadcast of those conversations, would injure the Bergers. Defendants were repeatedly warned that plaintiffs were in very poor health and possible fragile state of mind.

142. On or about March 24, 1993, at approximately 6:00 a.m., Mr. Berger was driving in his pickup truck down the county road leading from his Ranch when he was met by a caravan of approximately ten (10) vehicles and asked to stop the engine by defendant agent Scrafford. He was then informed that a Federal Judge ordered that a search warrant be executed on his Berger Ranch to look for evidence of illegal poisons, illegal coyote getters and dead eagles. He was interrogated in detail by several of the Government Defendants including defendant agents Scrafford, Branzell and Prieksat. Mr. Berger's interrogation was continued by defendant agent Scrafford as he was accompanied back to the Berger Ranch in his pickup truck and into his residence where Mrs. Berger was located. Unbeknownst to Mr. and Mrs. Berger, their conversations were recorded by a hidden microphone worn by defendant agent Scrafford and monitored and recorded by the CNN defendants. Mr. Berger was also videotaped by the CNN Defendants without his knowledge and permission but with the cooperation and consent of the Government Defendants.

143. Defendant AUSA McLean, and defendant agents Hanlon, Scrafford, Branzell and Prieksat, without provocation, menaced, intimidated and threatened plaintiffs by the manner in which they conducted the execution of the search warrant, interrogated plaintiffs and allowed the CNN Defendants to direct and conduct the videotaping and recording of the execution of the search warrant. CNN, TBS, Hamann, Rainey and Hooper, confirmed and ratified that conduct, with knowledge that plaintiffs' emotional and physical distress would thereby increase, and was done with a

wanton and reckless disregard of plaintiffs' rights and of the consequences to plaintiffs. Such conduct was intentional and malicious and one for the purpose of causing plaintiffs to suffer humiliation and mental anguish and emotional and physical distress. Defendant AUSA McLean, and defendant agents Hanlon, Scrafford, Branzell and Prieksat, and each of them, were acting as agents for CNN, TBS, Hamann, Rainey and Hooper.

144. CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, purposefully and intentionally engaged in outrageous acts which they knew or should have known would cause plaintiffs to suffer severe emotional and physical distress, pain and suffering. These acts include, but are not limited to (1) the unauthorized entry into plaintiffs' Ranch; (2) the unauthorized videotaping and recording of plaintiffs; (3) the videotaping and recording of plaintiffs' person, private possessions and statements; (4) the outrageous actions of the Government Defendants causing plaintiffs emotional and physical distress; (5) videotaping and recording of the search and interviews with the Government Defendants in response to questions posed by defendant Hamann which imputed guilt of criminal activity to the plaintiffs; and (6) broadcasting the videotape and recordings of plaintiffs made during the execution of the search warrant nationally and internationally, for the purpose of making an example of plaintiffs.

145. The conduct of CNN, TBS, Hamann, Rainey and Hooper, individually, and through their agents, servants and employees, and each of them, shocks the conscience and was done for the purpose of causing plaintiffs to suffer humiliation and mental anguish and emotional and physical distress, and was done with a wanton and reckless disregard of plaintiffs' Federal and State constitutional and other rights and of the consequences to plaintiffs. Defendants' conduct was so outrageous in character and so extreme in degree, as

to go beyond all possible bounds of decency, and is to be regarded as atrocious, and utterly intolerable in a civilized community. Moreover, defendants' conduct resulted in physical and mental injury, and constituted a substantial invasion of a legally protected interest, that caused a significant impact, including emotional distress so severe that no reasonable person could be expected to endure it.

146. As a proximate result of the aforementioned facts, plaintiffs suffered mental anguish, and emotional and physical distress, and has been injured in mind and body.

147. As a direct and proximate result of defendants' intentional infliction of emotional distress, plaintiff have been damaged in an amount to be determined according to proof at trail pursuant to 27-1-317, MCA.

148. Plaintiffs are informed and believe and thereon allege that they will continue to suffer extreme mental, physical and nervous pain and suffering in the future as a result of the injuries alleged herein. The exact amount of such damages is not known to plaintiffs at this time, and plaintiffs will move to amend this Complaint, to state such amount when the same becomes known to them, or on proof thereof.

149. As a further proximate result of defendant's intentional infliction of emotional distress, plaintiffs have incurred, and will continue to incur special damages. The full amount of such damages is not known to plaintiffs at this time and plaintiffs will seek to leave to amend this Complaint, to state such amount when the same becomes known to them, or on proof thereof.

150. The acts of CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, were oppressive and malicious. Accordingly, plaintiffs are entitled to and hereby demand punitive and exemplary damages by way of punishing and deterring defendants in an amount of no less than Ten Million Dollars ($10,000,000.00).

151. The actions of the defendants, jointly and severally, entitle plaintiffs to an award of exemplary and punitive damages.

SIXTH CAUSE OF ACTION

Declaratory Judgment

(By Plaintiffs against all Defendants)

152. Plaintiffs reallege the allegations of paragraphs 1 through 151 hereinabove and incorporate them by this reference as though fully set forth herein.

153. Plaintiffs seek a declaration pursuant to 28 U.S.C. § 2201 that defendant AUSA McLean and defendant agents Hanlon, Scrafford, Branzell and Prieksat, and each of them, violated plaintiffs' Fourth Amendment Constitutional rights to be free from unreasonable searches and seizures, and violated plaintiffs' privacy by agreeing with and permitting CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents and employees, and each of them, to enter plaintiffs private Ranch and residence without their consent and videotape and record the execution of a search warrant.

154. Plaintiffs seek a further declaration pursuant to 28 U.S.C. § 2201 that CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, violated plaintiffs' legal and constitutional rights when they entered plaintiffs' Ranch and residence without privilege or consent to videotape and record plaintiffs' persons, statements and personal belongings and the execution of the search warrant; videotaped and recorded private images of plaintiffs in the privacy of their home; and videotaped and recorded the Government Defendants actions and statements upon their property.

155. Plaintiffs seek a further declaration that the conduct of defendants CNN, TBS, Hamann, Rainey and Hooper, individually and through their agents, servants and employees, and each of them, shocks the conscience and caused or was done for the purpose of causing plaintiffs to

suffer humiliation and mental anguish and emotional or physical distress, and caused or was done with a wanton and reckless disregard of plaintiffs' Federal and State constitutional and other rights and of the consequences to plaintiffs. Defendants' conduct was so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and is to be regarded as atrocious, and utterly intolerable in a civilized community. Moreover, defendants' conduct resulted in physical and mental injury, and constituted a substantial invasion of a legally protected interest, that caused a significant impact, including emotional distress so severe that no reasonable person could be expected to endure it.

156. A judgment declaring the illegality and unconstitutionality of the tactics and policies employed in the instant situation is necessary to protect the citizens of this District, including plaintiffs, and this nation, to avoid future irreparable harm and injury.

SEVENTH CAUSE OF ACTION

Injunction

(By Plaintiffs against all Defendants)

157. Plaintiffs reallege the allegations of paragraphs 1 through 156 hereinabove and incorporate them by this reference as though fully set forth herein.

158. Plaintiffs are threatened with the possibility that CNN, TBS, Hamann, Rainey and Hooper, and/or their agents, servants and employees, will continue to publish the videotape and recordings or sell all or portions of the video footage and recorded conversations.

159. Defendants' conduct and threatened conduct, unless and until enjoined and restrained by order of this Court, will continue to cause great and irreparable injury to plaintiffs in that plaintiffs will suffer continued anxiety, humiliation, embarrassment, hurt feelings, mental anguish, severe emotional and physical distress, pain and suffering.

160. Plaintiffs have no adequate remedy at law for the injuries they will suffer in that a judgment for monetary damages with respect to the videotape will not end the potential for defendants' publication or sale thereof and will not end the threatened future invasion of plaintiffs' privacy.

161. Accordingly, plaintiffs seek and are entitled to a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining TBS, Rainey and Hooper, and their agents, servants and employees, and each of them, and all persons acting under, in concert with, or for them, from publishing or selling, in whole or in part, videotaped images of the pre-search briefing made on or about March 23, 1993, and of the execution of the search warrant within and without plaintiffs' Ranch made on or about March 24, 1993, and any other videotape and recordings that defendants made pertaining to the execution of the search warrant at the Berger Ranch on or about March 24, 1993.

EIGHTH CAUSE OF ACTION

VIOLATION OF 18 U.S.C. § 2511(2)(d)

Interception of Oral Communications

(By Plaintiffs against Defendants Turner Broadcasting Systems, Inc., Robert Rainey and Donald Hooper)

162. Plaintiffs reallege the allegations of paragraphs 1 through 34, 44 through 63 and 65 through 87 hereinabove and incorporate them by this reference as though fully set forth herein.

163. 18 U.S.C. § 2511(1)(a) and (b) prohibit any person from intercepting, procuring another person to intercept, intentionally using or procuring another person to use "any electronic, mechanical, or other device" to intercept, "any wire, oral, or electronic communication" except as otherwise provided by the statute.

164. 18 U.S.C. § 2511(1)(c) and (d) prohibit any person from intentionally disclosing or using the contents of "any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained

through the interception of a wire, oral, or electronic communication in violation of . . . ." 18 U.S.C. § 2511.

165. 18 U.S.C. § 2510(2) defines "oral communication" as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation . . . ."

166. 18 U.S.C. § 2510(5) defines "electronic, mechanical, or other device" as "any device or apparatus which can be used to intercept a wire, oral or electronic communication . . . ."

167. 18 U.S.C. § 2510(6) defines "person" as "any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation . . . ."

168. 18 U.S.C. § 2510(8) defines "contents . . . with respect to any wire, oral, or electronic communication" as "any information concerning the substance, purport, or meaning of that communication . . . ."

169. 18 U.S.C. § 2520(a) creates a civil cause of action for any person whose "wire, oral, or electronic communication" has been "intercepted, disclosed, or intentionally used" in violation of the Federal wiretap statute, 18 United States Code §§ 2510, et seq. 18 U.S.C. § 2520(b) provides that appropriate relief in a civil action under Section 2520 includes appropriate equitable or declaratory relief, actual damages and punitive damages, reasonable attorney's fees and other costs of litigation.

170. 18 U.S.C. § 2511(2)(c) excepts from the Federal ban on wiretapping without a court ordered warrant persons "acting under color of law ... where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception . . . ."

171. 18 U.S.C. § 2511(2)(d) excepts from the Federal ban on wiretapping without a court ordered warrant

persons "not acting under color of law ... where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State."

172. By secretly recording plaintiffs' conversations with Government defendants and others described in detail hereinabove, defendants Rainey and Hooper, and defendant TBS, through their own actions and/or the actions of their agents, representatives, co-conspirators and/or accessories, all "person" under 18 U.S.C. § 2510(6), intercepted and/or procured another person to intercept plaintiffs' oral communications in violation of 18 U.S.C. § 2511.

173. By secretly recording plaintiffs' conversations with Government defendants and others described in detail hereinabove, defendants Rainey and Hooper, and defendant TBS, through their own actions and/or the actions of their agents, representatives, co-conspirators and/or accessories, intentionally used or procured another person to use an electronic, mechanical, or other device to intercept plaintiffs' oral communications.

174. By broadcasting and facilitating the broadcasting of portions of the plaintiffs' illegally intercepted oral communications and/or information derived therefrom on the TBS and CNN television stations, on affiliate stations and other broadcast media worldwide, defendants TBS, Rainey and Hooper intentionally disclosed and used the contents of plaintiffs' illegally intercepted oral communications, knowing or having reason to know that the information was obtained through the interception of an oral communication in violation of 18 U.S.C. § 2511. By providing plaintiffs' illegally intercepted oral communications to CNN, TBS, its subsidiaries, affiliates and others for the purpose of editing and broadcast, defendants

Rainey and Hooper and defendant TBS by and through its agents, representatives and employees intentionally disclosed and used the contents of plaintiffs' illegally intercepted oral communications, knowing or having reason to know that the information was obtained through the interception of an oral communication in violation of 18 U.S.C. § 2511.

175. Plaintiffs are persons exhibiting an expectation that such communications are not subject to interception under circumstances justifying such expectation. At all times throughout the lengthy search and other preliminary confrontations described hereinabove, plaintiffs maintained a legitimate and reasonable expectation of privacy in their conversations with others. The search warrant did not authorize the videotaping or recording of the agents' search of the Berger Ranch. Notwithstanding plaintiffs' privacy interests, defendants surreptitiously recorded various statements of, and conversations with plaintiff Paul W. Berger, including the conversation between Mr. Berger and Government defendants which occurred on the road near the Berger Ranch. If Mr. Berger had known his statements and conversations were being recorded, he would have objected to the recording and demanded that it stop.

176. Defendants, either directly or through their agents, representatives, co-conspirators and accessories, further surreptitiously recorded statements or, and conversations with, plaintiffs Paul W. Berger and Erma R. Berger inside the Berger residence. The Berger residence was specifically excluded from the search warrant. Yet, upon entry onto the Berger Ranch, Government defendants Scrafford and Branzell entered the plaintiffs' residence with Mr. Berger. Conversations inside the residence between defendant agents Scrafford and Branzell and the Bergers were intercepted and transmitted by agent Scrafford's hidden microphone to, and recorded and broadcast by defendants, either directly or through their agents, representatives, co-conspirators and accessories without the Bergers' knowledge

or consent. Had the Bergers known that agent Scrafford was wearing a microphone, they would have asked him to remove the microphone and leave the residence. Plaintiffs never gave permission to be videotaped or recorded.

177. 18 U.S.C. § 2511(2)(c) does not except defendants TBS, Rainey or Hooper from liability under the Federal wiretap statute because neither TBS, Rainey, Hooper nor other CNN employees were parties to the illegally intercepted oral communications and neither TBS, Rainey, Hooper nor other CNN employees were "acting under color of law" for the purpose of 18 U.S.C. § 2511(2)(c). Defendants TBS, Rainey and Hooper, their agents, representatives, co-conspirators and accessories, were not authorized by the search warrant or otherwise by law to secretly record and intercept plaintiffs' oral communications. Plaintiffs' oral communications were secretly intercepted for broadcast to the world and for financial profit -- not for any law enforcement purpose. Defendants' abuse of Federal authority to gain illegal access to the plaintiffs' private property during the execution of the search warrant, although sufficient to establish they acted under color of Federal law and thus committed "state action" in violation of plaintiffs' Constitutional Fourth Amendment rights under Bivens, does not establish defendants acted "under color of law" for the purpose of the Federal wiretap statute.

178. 18 U.S.C. § 2511(2)(d) does not except defendants TBS, Rainey and Hooper from liability under the Federal wiretap statute because neither TBS, Rainey, Hooper nor other CNN employees were parties to plaintiffs' illegally intercepted oral communications and the communications were intercepted for the purpose of committing the following criminal or tortious acts in violation of the Constitution or laws of the United States and Montana:

(A) Violation of, and conspiracy to violate plaintiffs' rights under the Fourth Amendment to the United States Constitution arising under

Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotic, 403 U.S. 388 (1971). Plaintiffs reallege the allegations of paragraphs 88 through 120 hereinabove and incorporate them by this reference as though fully set forth herein;

(B) Violation of plaintiffs' right to privacy arising under the Montana Constitution, Article II, Section 10;

(C) Aiding and abetting the Government defendants as accessories to violate 18 U.S.C. § 2234 which makes criminal and willful exceeding of authority in executing a search warrant, specifically by secretly recording and intercepting plaintiffs' oral communications inside the Berger residence which was excluded from the search warrant;

(D) Aiding and abetting the Government defendants as accessories to violate 18 U.S.C. § 2236 which makes criminal the search of a private dwelling without a search warrant except under limited circumstances which do not apply to defendants' actions;

(E) Conversion of plaintiffs' secretly recorded and illegally intercepted oral communications into videotapes and broadcasts for the benefit, use and profit of TBS, Rainey, Hooper, CNN, Hamann and other private persons. Plaintiffs reallege the allegations of paragraphs 133 through 138 hereinabove and incorporate them by this reference as though fully set forth herein;

(F) Intentional infliction of emotional distress to the elderly plaintiffs. Plaintiffs reallege the allegations of paragraphs 139 through 151

hereinabove and incorporate them by this reference as through fully set forth herein.

179. As a direct and proximate result of the outrageous and wrongful acts of each of the defendants, plaintiffs suffered extreme indignities and humiliation, severe emotional and physical distress, pain and suffering, mental anguish, loss of liberty and loss of standing in the community, and have been held up to ridicule before their peers.

180. Plaintiffs did not have a reasonable opportunity to discover defendants' violation of 18 U.S.C. § 2511 until at least August, 1993 when the videotapes created by CNN and containing the illegally intercepted oral communications were produced to Mr. Berger's attorneys by CNN, less than two years prior to filing of this Complaint. 18 U.S.C. § 2520(e).

181. Plaintiffs are entitled to recover any and all actual damage, in a sum to be determined according to proof at trial, proximately caused by the wrongful acts hereinabove complained of and alleged herein.

182. Defendants TBS, Rainey and Hooper, in using and disclosing plaintiffs' illegally intercepted oral communications, and in intercepting those communications either directly or by and through defendants' agents, representatives, co-conspirators and accessories, acted willfully, maliciously, intentionally, oppressively, and in wanton and reckless disregard of plaintiffs' constitutional rights and of the possible consequences of their conduct. Accordingly, plaintiffs are entitled to and hereby demand punitive and exemplary damages by way of punishing and deterring defendants in an amount no less than Ten Million Dollars ($10,000,000.00).

183. The actions of the defendants, jointly and severally, entitle plaintiffs to an award of exemplary and punitive damages against defendants TBS, Rainey and Hooper.

184. Plaintiffs are further entitled to an award of reasonable attorney's fees and other costs of litigation.

185. Plaintiffs are further entitled to injunctive relief preventing defendant TBS and any of its subsidiaries and affiliates, and defendants Rainey and Hooper, from using or disclosing plaintiffs' illegally intercepted oral communications and any of their contents.

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, jointly and severally, as follows:

A. For general, special and future damages, inclusive of damages for emotional distress, in an amount to be determined according to proof;
B. For exemplary and punitive damages in an amount of no less than Ten Million Dollars ($10,000,000.00);
C. For a declaratory judgment as described in the Sixth Cause of Action;
D. For temporary restraining order and preliminary and permanent injunction preventing TBS, Rainey and Hooper, individually and through their agents, servants and employees, from broadcasting or selling all or part of videotape and recordings;
E. That defendants be required to pay the full costs of this action and plaintiffs' attorneys fees, according to proof at trial; and
F. That plaintiffs have such other and further relief as the Court may deem proper.

DATED: May 16, 1995

RESPECTFULLY SUBMITTED,

MOSES LAW FIRM

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DEMAND FOR JURY TRIAL

186. Plaintiffs in the above-entitled action request a trial by jury as provided by Amendment VII of the United States Constitution and by Rule 38 of the Federal Rules of Civil Procedure.

[CERTIFICATE OF MAILING OMITTED IN PRINTING]

[Exhibit A to First Amended Complaint]

ONE CNN CENTER, Box 105366, Atlanta, GA 30348-5365
(404) 827-1500

ENVIRONMENT UNIT: EARTH MATTERS/NETWORK EARTH
JACK HAMANN, Correspondent
953 W. Emerson St., Seattle, WA 98119-1419
(206) 285-0418 (404) 827-4023

March 11, 1993

Kris McLean
Assistant United States Attorney
District of Montana
100 N. Park Ave.
Helena, Montana 59601

Dear Mr. McLean:

This confirms our agreement that the United States Attorney's Office for the District of Montana agrees to allow CNN to accompany USFWS agents as they attempt to execute a criminal search warrant near Jordan, Montana, sometime during the week of March 22, 1993. Except as provided below, CNN shall have complete editorial control over any footage it shoots; shall not be obligated to use the footage; and does not waive any rights or privileges it may have with respect to the footage.

In return, CNN agrees to embargo the telecast of any videotape of the attempt to execute the search warrant until either:

1. A jury has been empaneled and instructed by a judge not to view television reports about the case; or
2. The defendant waives his right to a jury trial and agrees to have his case tried before a judge; or

3. A judge accepts a plea bargain; or
4. The government decides not to bring charges relating to the attempt to execute the search warrant.

Please acknowledge your agreement to the foregoing by executing the signature line below.

Sincerely,

/s/
Jack Hamann
Correspondent,
CNN Environment Unit

Acknowledged:

/s/
Kris McLean
Assistant United States Attorney
for the District of Montana
Helena, Montana

cc: Jennifer Falk Weiss, CNN Legal Dept.
Chet Burgess, CNN Environment Unit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

PAUL W. BERGER and ERMA R. BERGER, Plaintiffs, vs. RODNEY C. HANLON, JOEL SCRAFFORD, RICHARD C. BRANZELI., ROBERT PRIEKSAT, KRIS A. M:LEAN, TURNER BROADCASTING SYSTEMS, INC., a Georgia corporation, ROBERT RAINEY, and DONALD HOOPER, Defendants.	) Case No. CV 95-046-BLG-JDS) AFFIDAVIT OF PAUL W. BERGER

STATE OF MONTANA)
: SS.
COUNTY OF GARFIELD)

I, Paul W. Berger, being first duly sworn, declare:

1. I am the Plaintiff in the above-entitled action, along with my wife, Erma R. ("Rosie") Berger. The facts set forth are based on my personal knowledge and if called to testify, I could and would competently do so under oath. This affidavit is submitted in support of Plaintiffs' Opposition to the Brief in Support of the Federal Defendants' Motion to Dismiss or in the Alternative for Summary Judgment in CV 95-46-BLG-JDS and Plaintiffs' Opposition to Motion for Summary Judgment by Cable News Network, Inc. and Jack Hamman in CV 94-46-BLG-JDS.

2. At approximately 6:00 a.m. on the morning of March 24, 1993, my neighbor called me on the telephone and

advised me that a group of law enforcement agents were gathering on the county road leading to my ranch.

3. I drove down the county road to see what the matter was all about with the law enforcement agents and met up with a convoy of many vehicles.

4. As I sat in the cab of my truck, I was approached by several agents. One of them identified himself as Special Agent Scrafford who advised me that he was in charge and had obtained a search warrant that was about to be executed at my ranch. I was shown a copy of the first page of a search warrant.

5. Special Agent Scrafford instructed me to drive back to my ranch so that the search could begin and asked if he could ride back to the ranch with me in my truck and I obliged. He told me that I had to do as he said. I did not know at the time that Special Agent Scrafford was wearing a hidden microphone for Cable News Network.

6. Upon entering my ranch, Special Agents Scrafford and Branzell followed me into the house. Agent Scrafford or Branzell was with me all day. In fact, Agent Scrafford followed me in and out of the house all day, including following me into the house for me to go to the bathroom, which occurred frequently because of my medication. It never occurred to me that I had a right to refuse to allow any of them into my house after I was told that the agents had a warrant, and I was followed home by a caravan of government vehicles filled with law enforcement agents wearing weapons, and being escorted by a Federal agent back to my ranch in my own truck. The agents did not ask me for permission to enter my house, nor did they ask permission of my wife to enter the house.

7. I was told by Agent Scrafford that the Court ordered a search of every building on my ranch. I was not told that the house was specifically excluded from search.

8. It was unknown to me at the time that the agents inside of the house were recording conversations of me and

my wife. Had I know this, I would never have allowed him to continue recording our conversations.

9. At no time during the entire day, were my wife and I advised of any rights. We were never told, for example, that we had a right to refuse to answer questions.

10. I was asked to accompany agents searching the ranch to the shed where I stored chemicals. While inside the shed, I noticed a man aiming a large camera at me; there was another man holding a large microphone. I did not know at the time that a cameraman for Cable News Network was brought onto the ranch by the Federal agents to videotape and record the search.

11. I assumed that everyone on our ranch, including the Cable News Network camera crew, were law enforcement agents conducting the search and I was never told anything by these people to believe otherwise. At no time did they identify themselves as Cable News Network; nor did any of the law enforcement agents conducting the search ever tell me that they were members of the news media or Cable News Network.

12. Everyone who came onto the ranch that morning wore work clothes and all looked the same. Only some of them wore jackets with law enforcement identification on the back, but I had no reason to believe that there were people on the ranch who were not law enforcement.

13. My wife and I were never asked and never gave permission to allow any news media, including Cable News Network, onto our ranch to videotape or record the search. We were also never asked and never gave permission to Cable News Network to use or, in any way distribute, any part of any videotape or audio recordings obtained during the search of our ranch on March 24, 1993.

14. During the entire time that the search was taking place, I was asked a lot of questions by the agents, including Agent Scrafford, who were trying to elicit answers from me, including about using pesticides on carcasses.

15. At no time was I told that my wife and I were free to leave while the search was taking place. At no time did I feel that my wife and I were free to leave. We cooperated and did not resist. After all, we were not left alone by the agents, all of whom wore weapons, the entire time of the search. Agent Branzell told me that he would have to be with me all day. I was told by Agent Scrafford that if I didn't do as he said, he would run me down to the lockup in Billings.

16. During the search, the agents left open the gates we use to fence in our thousands of sheep for breading and management control. The agents and their trucks frightened the sheep who fled through the open gates into a mixed mob. It took me and my hands months to sort them out.

17. I am 74 years old and in poor health. At the time of the search, I was on oxygen and medication and had just returned home ten days earlier after spending the previous five months in and out of the hospital. I was very upset by the search and could not control my shaking. My wife, Rosie, is 84 years old and also in poor health; she was just released from the hospital a week before the search of our ranch.

18. My wife and I have always preferred to live out in the country, away from cities and towns. Part of living out here is the right to be left alone. What we say and do and how we live is our private life and not for the world to see. Throughout our ranch, we have put up "Private, No Trespassing" signs. We expect our private life to remain private.

Further Affiant saith naught.

DONE AND DATED THIS 26th day of August, 1995.

/s/
Paul W. Berger

SUBSCRIBED AND SWORN to before me this 26th day of August, 1995.

/s/
Notary Public for the State of Montana
Residing at Jordan, MT
My Commission Expires 4/24/96

[CERTIFICATE OF MAILING OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

PAUL W. BERGER and ERMA R. BERGER,	) Case No. CV 95-46-BLG-JDS
Plaintiffs,	) PLAINTIFFS' RESPONSE TO FEDERAL DEFENDANTS'
vs.	) STATEMENT OF UNCONTROVERTED
RODNEY C. HANLON, JOEL SCRAFFORD, RICHARD C. BRANZELL, ROBERT PRIEKSAT, KRIS A. McLEAN TURNER BROAD-CASTING SYSTEMS, INC., a Georgia corporation, ROBERT RAINEY, and DONALD HOOPER,	) FACTS, STATEMENT OF GENUINE ISSUES AND ADDITIONAL UNCONTROVERTED FACTS IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT
Defendants.	) [Fed. R. Civ. P. 56 and Rule 220-4(a)]

I.

PLAINTIFFS' RESPONSE TO FEDERAL DEFENDANTS' STATEMENT OF UNCONTROVERTED FACTS

Plaintiffs Paul W. Berger and Erma R. Berger ("Bergers") hereby respond to the Federal Defendants' Statement of Uncontroverted Facts. Pursuant to Rule 220-4(a), the Bergers also submit their Statement of Genuine Issues and Additional Uncontroverted Facts, in support of their opposition to the Federal Defendants' Motion to Dismiss or in the Alternative Summary Judgment.

Furthermore, the Bergers object on the ground they have not had an opportunity to conduct adequate discovery and, thus, the Federal Defendants' alternative motion for summary judgment is premature. Fed. R. Civ. P. 56(f); Affidavit of Jay F. Lansing ("Lansing Aff."), ¶¶ 14-16.

Federal Defendant's Alleged Uncontroverted Facts	Plaintiffs' Responses
1. On March 24, 1995, Special Agents of the Fish and Wildlife Service ("FWS") investigating illegal predator poisonings executed a valid federal search warrant on the ranch owned by plaintiffs Paul and Erma R. Burger. Hanlon Decl. ¶3.	1. Without waiving any objections, plaintiffs admit that on March 24, 1993, FWS Special Agents executed a federal search warrant on the Berger Ranch. However, plaintiffs object to the allegedly undisputed nature of the circumstances surrounding the execution of the search warrant involving CNN.

Federal Defendant's Alleged Uncontroverted Facts	Plaintiffs' Responses
2. Cable News Network ("CNN") correspondent Jack Hamann and a CNN camera crew requested and received permission to accompany the FWS agents during the execution of the search warrant. See, e.g., First Amended Complaint. ¶34.	2. Without waiving any objections, plaintiffs admit that CNN correspondent Hamann and the CNN camera crew, pursuant to an agreement with the Government, accompanied FWS agents onto the Berger ranch during the execution of the warrant. However, plaintiffs object and dispute that the agreement was lawful, and dispute the circumstances surrounding the execution of the warrants on the Berger ranch. See Plaintiffs' Statement of Genuine Issues and Additional Uncontroverted Facts ("PS"), infra; Lansing Aff., Exh. 7 (Scrafford [transcript] at [page] 37).

Federal Defendant's Alleged Uncontroverted Facts	Plaintiffs' Responses
3. Special Agents Scrafford and Branzell requested permission to enter the residence in order to explain to Mrs. Berger the agents' purpose at the ranch. Scrafford Testimony. TR. at 102 (Federal Defendants' Request for Judicial Notice, Exh. B).	3. Without waiving any objections, plaintiffs admit that defendant Special Agent Scrafford testified in United States v. Berger, but object and dispute the undisputed nature of the testimony that was given. Defendant Special Agent Scrafford did not testify to this statement at page 102 of the transcript. Agent Scrafford instead testified that he did not request permission. Lansing Aff. Exh. 7. (Scrafford at 115-116). See PS, infra. It is also undisputed that any such "permission," if given, was involuntary.
4. The agents did not search for any evidence of illegal predator poisonings (the subject of the investigation) in the residence. Scrafford Testimony, Tr. at 108 (Federal Defendants' Request for Judicial Notice, Exh. B).	4. Without waiving any objections, plaintiffs admit that defendant Special Agent Scrafford testified in United States v. Berger. However, plaintiffs object and dispute that defendant Scrafford's testimony is undisputed and that entry into the Bergers residence was justifiable. See PS, infra.

Federal Defendant's Alleged Uncontroverted Facts	Plaintiffs' Responses
5. The agents did not insist that the Bergers remain on the ranch during the execution of the warrant. Scrafford Testimony. Tr. at 103 (Federal Defendants' Request for Judicial Notice, Exh. B).	5. Without waiving any objections, plaintiffs admit that defendant Special Agent Scrafford testified in United States v. Berger. However, plaintiffs object and dispute that defendant Scrafford's testimony is undisputed. See PS, infra.

II.

PLAINTIFFS' STATEMENT OF GENUINE ISSUES

Pursuant to Rule 220-4(a), of the Revised Rules of Procedure for the United States District Court for the District of Montana, the Bergers hereby submit the following genuine issues:

Genuine Statement	Evidence
1. Assistant United States Attorney Kris A. McLean ("AUSA McLean") was not authorized to serve or execute the search warrant at the Berger Ranch.	Lansing Aff., Exhibit ("Exh.") 7, (Hanlon at 27-30); see Fed. R. Civ. P. 41(c), (h) and 54(c); 18 U.S.C. §§3105, 2234.
2. AUSA McLean was not necessary to the execution of the search warrant at the Berger Ranch.	Id.; Lansing Aff., Exh. 5 (DOJ Manual, 1-7.000 Media Relations (1993-2 Supp.); 28 C.F.R. §50.2(b)); see also, DOJ Manual, 1-7.0001 (1990-1 Supp.); 5 U.S.C. §§552a (b)(1), (11), (i)(1).

Genuine Statement	Evidence
3. AUSA McLean was not authorized to execute an agreement with CNN allowing CNN to accompany Federal law enforcement agents during the execution of a search warrant.	Id.
4. CNN was not authorized to attend and participate, or videotape and record the pre-search briefing on March 23, 1993.	Id.
5. The agreement executed by AUSA McLean and CNN correspondent Jack Hamann ("Hamann"), did not confer legal authority on CNN to be at the Berger Ranch on March 24, 1993.	Id.
6. The agreement did not confer legal authority on CNN to videotape and record the execution of the search warrant at the Berger Ranch on March 24, 1993.	Id.
7. The Bergers were not asked to give permission or consent to CNN to be on the Berger Ranch on March 24, 1993.	Affidavit of Paul W. Berger ("Berger Aff."), ¶¶5, 6, 8, 10-13.

Genuine Statement	Evidence
8. The Bergers were not asked to give permission or consent to being videotaped or recorded by CNN on March 24, 1993.	Id.
9. The Bergers were not asked to give permission or consent to CNN to publish or distribute any videotape or audio outtakes made on the Berger Ranch on March 24, 1993.	Id.
10. The Bergers were not asked to give permission or consent to Federal defendants Branzell and Scrafford to enter the residence on March 24, 1993.	Lansing Aff., Exh. 7, (Scrafford at 115-116); Berger Aff., ¶6; see 18 U.S.C. §§2234, 2236, 3109.
11. The Bergers were not advised that the search warrant specifically excluded the residence.	Lansing Aff., Exh. 3; Berger Aff., ¶7; see 18 U.S.C. §§2234, 2236, 3109.
12. The Bergers were not advised that they were free to leave the ranch during the execution of the search warrant on March 24, 1993.	Berger Aff., ¶15.

Genuine Statement	Evidence
13. The Bergers did not feel free to leave the ranch during the execution of the search warrant on March 24, 1993.	Berger Aff., ¶15.
14. The Federal defendants disclosed confidential information about the Bergers at the pre-search briefing on March 23, 1993 and during the execution of the warrants on March 24, 1993.	Lansing Aff., Exh. 8 (September 9, 1993 CNN Environment Unit transcript ("CNN Transcript") of audio and videotape of March 23, 1993 pre-search briefing and March 24, 1993 execution of search warrant at Berger Ranch entitled "Ring of Death"), [citing] tape 01 at [pages] 3 to tape 05 at 8; Lansing Aff., Exh. 5 (DOJ Manual, 1-7.000 Media Relations (1993-2 Supp.); 28 C.F.R. §50.2(b)); see also, DOJ Manual, 1-7.0001 (1990-1 Supp.); 5 U.S.C. §§552a (b)(1), (11), (i)(1); 18 U.S.C. §§3105, 2234, 2236, 3109.

Genuine Statement	Evidence
15. The Federal defendants, including AUSA McLean, were not authorized to give on-camera or audio recorded interviews with CNN at any time.	Lansing Aff., Exh. 5, (DOJ Manual, 1-7.000 Media Relations (1993-2 Supp.); 28 C.F.R. §50.2(b)); see also, DOJ Manual, 1-7.0001 (1990-1 Supp.); 5 U.S.C. §§552a (b)(1), (11), (i)(1).
16. Special Agent Scrafford was not authorized to wear the hidden microphone for CNN.	Id.; Lansing Aff. Exh. 6; see 18 U.S.C. §§2234, 2236, 3109.
17. The Government and Federal defendants were not authorized to allow a CNN camera to be mounted on a Government vehicle.	Id.

III.

PLAINTIFFS' FURTHER STATEMENT OF UNCONTROVERTED FACTS

Plaintiffs submit the following additional undisputed facts and supporting evidence in order to provide the Court with an overview of the relevant factual circumstances which further show that defendants' alleged uncontroverted facts are in dispute and compel denial of defendants' motions. (Endnote 1)

Plaintiffs' Uncontroverted Facts	Evidence
18. A written agreement dated March 11, 1993 ("Agreement") was executed between AUSA McLean, on behalf of the United States Attorney's Office for the District of Montana ("Government"), and defendant Hamann, a correspondent for and on behalf of defendants CNN and Turner Broadcasting Systems, Inc. ("TBS"), which provided, in pertinent part that: "This confirms our agreement that the United States Attorney's Office for the District of Montana agrees to allow CNN to accompany USFWS [United States Fish & Wildlife Service] agents as they attempt to execute a criminal search near Jordan, Montana, sometime during the week of March 22, 1993. . . ." The United States Attorney's Office replaced the USFWS in an unexecuted version of the letter dated March 5, 1993.	Lansing Aff., Exh. 1; (the executed Agreement is Exhibit A to First Amended Complaint).

Plaintiffs' Uncontroverted Facts	Evidence
19. Under the Agreement, the Government allowed Hamann and a CNN camera crew (defendants Robert Rainey and Donald Hooper), on behalf of CNN and TBS (collectively "CNN" or "CNN defendants"), to accompany USFWS Special Agents including Rodney C. Hanlon ("Hanlon"), Joel Scrafford ("Scrafford"), Richard C. Branzell ("Branzell") and Robert Prieksat ("Prieksat"), as well as AUSA McLean (collectively "Federal defendants"), and other Federal and State law enforcement agents, onto the Berger Ranch on March 24, 1993, to videotape and record the execution of search and seizure warrants.	Lansing Aff., Exh. 1.

Plaintiffs' Uncontroverted Facts	Evidence
20. The Agreement was executed before the Berger Search Warrant was issued. In early 1993, USFWS officials were contacted by CNN representatives about filming the execution of a search warrant to obtain "sound bites" for a story on the alleged poisoning of endangered species. CNN defendant Hamann was referred to Federal defendant Hanlon and AUSA McLean, who did not object to CNN's filming.	See Brief in Support of the Federal Defendants' Motion to Dismiss or in the Alternative for Summary Judgment ("D.Brief") at 2:22-3:3, citing plaintiffs' First Amended Complaint. (Endnote 2)

Plaintiffs' Uncontroverted Facts	Evidence
21. The CNN defendants wanted to obtain live action video footage of search warrant executions to broadcast on CNN and TBS environmental programs respectively entitled "Earth Matters" and Network Earth." This was outlined by defendant Hamann in a CNN/TBS Network Earth/Earth Matters memorandum entitled "Producer Package Checklist: Story Set-Up Packet" and dated March 11, 1993.	Lansing Aff., Exh. 2.

Plaintiffs' Uncontroverted Facts	Evidence
22. AUSA McLean was admittedly "motivated by the prosecutor's self-interest in getting the word out...," when he executed the Agreement to allow the CNN defendants to videotape and record the execution of the Search Warrant on the Berger Ranch -- during an on-going criminal investigation -- so that the publicity would have a deterrent effect on "...other people that might be contemplating these crimes, [or] committing these crimes right now," and to do his personal "bit" for the environment.	Lansing Aff., Exh. 8, CNN Transcript, tape 11 at 7-8; Exh. 1.
23. The CNN defendants' intended to participate in and videotape and record the execution of the search warrant on the Berger Ranch for commercial purposes and to provide the Government with the means for obtaining publicity.	Lansing Aff., Exh. 1.
24. The CNN defendants' legal department received a copy of the Agreement.	Lansing Aff., Exh. 1.

Plaintiffs' Uncontroverted Facts	Evidence
25. All of this information was deliberately concealed from United States Magistrate Judge Robert Holter and was not disclosed in defendant Hanlon's Application and Affidavit for Search Warrant, nor in the two (2) Application and Affidavit for Seizure Warrant forms, which were submitted to the Magistrate Judge on or about March 18, 1993, after the execution of the Agreement.	Lansing Aff., Exh. 3 and 4.
26. The Search Warrant and two (2) Seizure Warrants were issued by the Magistrate Judge on or about March 18, 1993, specifically to defendant Hanlon in his official capacity.	Lansing Aff., Exh. 3 and 4; see also Declaration of Rodney C. Hanlon ("Hanlon Decl.") in support of Federal Defendants' Motion to Dismiss or in the Alternative Summary Judgment, ¶4.

Plaintiffs' Uncontroverted Facts	Evidence
27. The CNN defendants were not specified in the Application and Affidavit for Search Warrant submitted by defendant Hanlon to the Magistrate Judge because they were not necessary to assist in the execution of the Search Warrant.	Lansing Aff., Exh. 3.
28. The Berger residence was specifically excluded from search under the Search Warrant.	Lansing Aff., Exh. 3; Berger Aff., ¶18.
29. The CNN defendants were permitted to attend, participate in, and videotape and record the pre-search briefing which took place on or about March 23, 1993. It was conducted by defendant Hanlon, the FWS Special Agent assigned as the case coordinator by his supervisor, defendant Scrafford.	Lansing Aff., Exh, 8, CNN Transcript, tape 05 at 6-7; Hanlon Decl., ¶3.

Plaintiffs' Uncontroverted Facts	Evidence
30. CNN's attendance and participation in the pre-search briefing was permitted by the Federal defendants in charge of the various aspects of the criminal investigation against Mr. Berger, namely, AUSA McLean as well as FWS Special Agents Hanlon and Scrafford.	Lansing Aff., Exhs. 1 and 2; Exh. 8, CNN Transcript.
31. All of the Federal defendants and other law enforcement agents in attendance were aware of and knew that CNN was present and participating in the pre-search briefing.	Lansing Aff., Exh. 8, CNN Transcript of tapes 01-05.

Plaintiffs' Uncontroverted Facts	Evidence
32. During the pre-search briefing, AUSA McLean and the other Federal defendants disclosed to the CNN defendants, orally and in writing, confidential information about the Bergers and the pending criminal investigation against Mr. Berger, as well as details about the execution of the search warrant scheduled for the next morning; all of this was videotaped and recorded by the CNN defendants.	Lansing Aff., Exh. 8, CNN Transcript, tape 01 at 3-4, tape 03 at 1-5, and tape 04 at 1-6.
33. The Agreement executed by AUSA McLean, and CNN's participation in the pre-search briefing violates Federal statutes and Department of Justice policies limiting Federal prosecutor relations with and prohibits the release of information to the media about on-going criminal investigations.	Lansing Aff., Exh. 5, (DOJ Manual, 1-7.000 Medial Relations (1993-2 Supp.); 28 C.F.R. §50.2(b)) see also, DOJ Manual, 1-7.0001 (1990-1 Supp.); 5 U.S.C. §§552a (b)(1), (11), (i)(1); 18 U.S.C. §§3105, 2234.

Plaintiffs' Uncontroverted Facts	Evidence
34. On the morning of March 24, 1993, the Federal defendants proceeded toward the Berger Ranch in a caravan of Government vehicles. The Federal defendants were accompanied by the CNN defendants in the Government vehicles. The travelling caravan was videotaped by one of the CNN defendants from the interior of one of the Government vehicles, and another CNN camera was mounted to the exterior of a Government vehicle driven by defendant Scrafford (which was later driven by defendant Branzell).	Lansing Aff., Exh. 8, CNN Transcript, tape 06 at 2-tape 07 at 2.
35. Mr. Berger drove down the county road leading away from the Ranch and met with the throng of Federal defendants in the vehicle convoy heading toward his Ranch.	Lansing Aff., Exh. 8, CNN Transcript, tape 06 at 2-tape 07 at 2; Berger Aff., ¶2.

Plaintiffs' Uncontroverted Facts	Evidence
36. Upon meeting the Government caravan on the county road, Mr. Berger pulled over and was approached by several Federal defendants, including defendants Scrafford, Branzell and Prieksat. Mr. Berger was advised by defendant Scrafford that a Search Warrant was about to be executed at his Ranch. However, Mr. Berger was told by defendant Scrafford that the Court ordered the Federal defendants to search every building on the ranch; he was not told that the residence was specifically excluded from search.	Lansing Aff., Exh. 8, CNN Transcript, tape 07 at 6; Berger Aff., ¶¶4 and 7.
37. Mr. Berger was not advised that defendant Scrafford was wearing a hidden microphone that allowed the CNN defendants to monitor and record everything that he was saying.	Lansing Aff., Exh. 8, CNN Transcript, tape 07 at 1-16; Berger Aff. ¶5; D.Brief at 3:9-10.

Plaintiffs' Uncontroverted Facts	Evidence
38. Mr. Berger was not advised about the presence of the CNN defendants and was not advised that they were already videotaping and recording him.	Lansing Aff., Exh. 8, CNN Transcript, tape 07 at 1-16; Berger Aff., ¶10.
39. Mr. Berger was interrogated by defendants Scrafford, Branzell and Prieksat, who asked him leading questions about his alleged use of illegal poisons to bait carcasses, illegal coyote getters, and killing eagles. This interrogation was videotaped and recorded by the CNN defendants.	Lansing Aff., Exh. 8, CNN Transcript, tape 07 at 1-16; Berger Aff., ¶14; see 18 U.S.C. §§2234, 2236.
40. Mr. Berger was never advised of any of his rights, such as the right to remain silent.	Lansing Aff., Exh. 8, CNN Transcripts (entire); Berger Aff., ¶9.

Plaintiffs' Uncontroverted Facts	Evidence
41. Federal defendant Scrafford requested and was allowed to accompany Mr. Berger in his truck back to the Ranch under pretext that Scrafford should explain the situation to Mrs. Berger. While driving back to the Ranch, Mr. Berger was not advised that everything he said was being monitored and recorded by the CNN defendants through the hidden CNN microphone worn by defendant Scrafford.	Lansing Aff., Exh., CNN Transcript, tape 07 at 1-16; Berger Aff., ¶5.
42. Mr. Berger never consented to being recorded and videotaped on the county road.	Berger Aff., ¶¶5, 18.
43. Defendant Scrafford and the Federal defendants deliberately concealed the fact that he was wearing a hidden CNN microphone. They also deliberately concealed the presence of the CNN defendants and the fact that CNN was videotaping and recording everything, including Mr. Berger.	Lansing Aff., Exh. 8 CNN Transcript, tape 07 at 1-16; Berger Aff., ¶¶5, 6, 8 and 10-13.

Plaintiffs' Uncontroverted Facts	Evidence
44. CNN wired defendant Scrafford with a hidden microphone and mounted a CNN camera onto a Government vehicle.	Lansing Aff., Exh. 1 and 2; Exh. 8, CNN Transcript (entire).
45. Upon entering the Berger Ranch on the morning of March 24, 1993, Federal defendants Scrafford and Branzell followed Mr. Berger into the residence without obtaining permission of either Mr. Berger or Mrs. Berger.	Lansing Aff., Exh. 7 (Scrafford at 115-116); Exh. 8, CNN Transcript, tape 07 at 15-16; Berger Aff. ¶¶6, 18.
46. The Bergers were not advised that their residence was specifically excluded from search.	Lansing Aff., Exh. 3; Exh. 8, CNN Transcript, tape 07 at 6; Berger Aff., ¶7.
47. The CNN defendants freely accompanied the Federal defendants (and other Federal and State agents) during the March 24, 1993 execution of the search warrant on the Berger Ranch.	D.Brief at 3:7-8; Lansing Aff., Exh. 7 (Scrafford at 37).

Plaintiffs' Uncontroverted Facts	Evidence
48. The Bergers were not advised that everything they said was being monitored and recorded by the CNN defendants through the hidden CNN microphone worn by Federal defendant Scrafford.	Lansing Aff., Exh. 8, CNN Transcript, tape 07 at 15-16; Berger Aff., ¶¶5, 6, 8, 10-13, and 18.
49. The Bergers cooperated fully.	Berger Aff., ¶¶5-17.
50. The Bergers were not advised that the CNN defendants had entered the Ranch and were videotaping and recording the execution of the warrants by the Federal defendants and other law enforcement agents on their property.	Lansing Aff., Exh. 8, CNN Transcript (entire); Berger Aff., ¶¶5, 6, 8, 10-13 and 18.

Plaintiffs' Uncontroverted Facts	Evidence
51. Mr. Berger is 74 years old and in poor health, having spent the previous five months in and out of the hospital. He was on oxygen and medication at the time of the execution of the Search Warrant. Mr. Berger was visibly upset. Mrs. Berger, who is 84 years old, is also in poor health and had just been released from the hospital a week before the Search Warrant was executed at the Ranch.	Berger Aff., ¶17.
52. The CNN defendants were allowed to participate in and videotape and record the execution of the warrants at the Berger Ranch by the Federal defendants in charge of various aspects of the criminal investigation, including AUSA McLean, and FWS Special Agents Scrafford and Hanlon.	Lansing Aff., Exhs. 1 - 2; Exh. 8, CNN Transcript, tape 10 at 3-11.

Plaintiffs' Uncontroverted Facts	Evidence
53. The Federal defendants had no authority to allow CNN to enter the Berger Ranch with them to videotape and record the execution of the Search Warrant.	Lansing Aff., Exh. 3 and 4; see 5 U.S.C. §552a, 18 U.S.C. §§3105, 3109.
54. The CNN defendants freely followed and videotaped and recorded the Federal defendants and agents engaged in the execution of the warrants, as well as Hamann's interviews with the Federal defendants, in which he asked generally about rogue ranchers who illegally killed eagles and specifically solicited incriminating comments about Mr. Berger.	Lansing Aff. Exh. 8, CNN Transcript, tape 07-tape 22.
55. Mr. Berger and Mrs. Berger did not consent to the presence of CNN on their Ranch on March 24, 1993.	Berger Aff., ¶¶5, 8, 10-13 and 18.

Plaintiffs' Uncontroverted Facts	Evidence
56. The Bergers believed that the CNN defendants were law enforcement agents. They were indistinguishable from the Federal defendants because they all wore work, or "street" clothes (some of the agents donned yellow protective outer wear); the CNN defendants did not bear any identification designating themselves as members of CNN or the media. AUSA McLean also appeared to be a Federal Law enforcement agent. He wore a jacket with "Federal Agent" on the back and an "ATF" (Alcohol, Tobacco and Firearms) cap.	Lansing Aff., Exh. 8, CNN Transcript, tape 06 at 3; Berger Aff., ¶¶11 and 12.
57. All of the federal defendants were armed with weapons.	Lansing Aff., Exh. 7, (Scrafford at 112).

Plaintiffs' Uncontroverted Facts	Evidence
58. The Government and CNN worked in concert to conceal from the Bergers, the CNN's identify, the fact that Scrafford wore the hidden CNN microphone, and that CNN was videotaping and recording the execution of the Search Warrant. By way of example, Mr. Berger discovered the videocamera and protested about being filmed while agents were searching inside a shed on the Berger Ranch. To avoid a confrontation, Hamann deftly directed the camera to film the contaminants team and Federal defendants Branzell and Scrafford diverted Mr. Berger's attention by bombarding him with leading questions about using poisons and shooting eagles.	Lansing Aff., Exh. 8, CNN Transcript, tape 08 at 13; Berger Aff., ¶¶5 and 10.

Plaintiffs' Uncontroverted Facts	Evidence
59. At no time were either of the Bergers advised that they were free to leave the Ranch during the execution of the search warrant. Mr. Berger was told that he would have to be in the company of an agent during the entire time of the execution of the search warrant.	Lansing Aff., Exh. 8, CNN Transcript, tape 07 at 25; Berger Aff., ¶¶15 and 18.
60. Mrs. "Rosie" Berger was never a suspect or target of the underlying criminal investigation and was never charged with any criminal offense.	Lansing Aff., ¶8.
61. At no time during the execution of the search warrant were either of the Bergers advised of any rights including the right against self-incrimination.	Lansing Aff., Exh. 8, CNN Transcript (entire); Berger Aff., ¶9.

Plaintiffs' Uncontroverted Facts	Evidence
62. The Federal defendants caused the execution of the Berger Search Warrant (and pre-search briefing) to be videotaped and recorded by the CNN defendants to facilitate the publication of all or part of the video and audio footage ("outtakes") for broadcast on the CNN and TBS programs entitled "Earth Matters" and "Network Earth."	Lansing Aff., Exhs. 1 and 2.
63. Video and audio outtakes of the execution of the Berger Search Warrant were incorporated into a program segment entitled "Ring of Death" which included Mr. Berger's secretly recorded conversations, interiors of buildings and various outdoor location on the Berger Ranch, and scenes of the agents searching and seizing "evidence."	Lansing Aff., ¶8. Exh. 9.

Plaintiffs' Uncontroverted Facts	Evidence
64. AUSA McLean was one of several Federal defendants interviewed by defendant Hamann previously and for the CNN camera during the execution of the search warrant during which he made personal and disparaging remarks about Mr. Berger.	Lansing Aff., Exh. 5, (DOJ Manual, 1-7.000 Media Relations (1993-2 Supp.); 28 C.F.R. §50.2(b)); see also, DOJ Manual, 1-70001 (1990-1 Supp.); 5 U.S.C. §§552a (b)(1), (11), (i)(1); Exh. 8, CNN Transcript tape 11 at 2-8.
65. No formal charges had yet been brought against Mr. Berger when the search warrant was executed and videotaped and recorded on March 24, 1993.	Lansing Aff., Exh. 3 and 4.
66. Despite Mr. Berger's acquittal on all charges of killing eagles, defendant Hamann introduced the segment by implying that Mr. Berger had killed hundreds of federally-protected eagles.	Lansing Aff., Exh. 8, CNN transcript, tape 12 at 1-3.

Plaintiffs' Uncontroverted Facts	Evidence
67. A few days prior to Mr. Berger's sentencing on October 30, 1993, Federal defendant Hanlon sent a letter on USFWS stationary, to "All participants in the Paul Berger (INV.4506A0) eagle poisoning investigations," to announce the broadcast schedule of the segment on CNN and TBS. Hanlon's message also noted that "the Paul Bergers and non-believers of the world would have a chance to see and hear the truth through the CNN video, not just in Sand Springs, Montana, but the whole WORLD . . . Japan, Chile, France and every place in between."	Lansing Aff., Exh. 10.
68. The segment was broadcast by TBS on October 17, 1993, just three days before Mr. Berger's sentencing.	Lansing Aff., Exh. 9.

Plaintiffs' Uncontroverted Facts	Evidence
69. The segment aired nationally and internationally at least ten (10) times between October 1993 and April 1994, over CNN and TBS, as well as CNN1 and TNT Latin America.	Lansing Aff., Exh. 9.
70. Had the Bergers known that the CNN defendants were members of the media and not law enforcement agents authorized to execute the Search Warrant, they would not have allowed the CNN defendants to remain on the Berger Ranch during the execution of the Search Warrant on March 24, 1993.	Berger Aff., ¶¶13 and 18.
71. Neither Mr. Berger nor Mrs. Berger ever consented to the use, sale or distribution of any portion of any videotape or audio recording made during the execution of the Search Warrant on the Berger Ranch on March 24, 1993.	Berger Aff., ¶¶13 and 18.

DATED: August 29, 1995

RESPECTFULLY SUBMITTED,

MOSES LAW FIRM

By _____/s/_____
Jay F. Lansing

ROSSBACHER & ASSOCIATES

Attorneys for Plaintiffs
Paul W. Berger and Erma R. Berger

[CERTIFICATE OF MAILING OMITTED IN PRINTING]

1. The facts referred to herein and in plaintiffs' opposition brief are established by the following evidentiary sources: defendants' admissions; transcript of the criminal proceedings in United States v. Berger; transcripts of the CNN videotapes, both broadcasted and non-broadcasted; Affidavit of Paul W. Berger; Affidavit of Jay F. Lansing and exhibits. The videotapes created by CNN are available for the Court's inspection In Camera if the Court wishes to conduct such an inspection.

2. For summary judgment, statements which are deemed admissions "have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact [citations omitted]." See American Title Ins. Co. v. Lacelaw Corp., 861 F.2d 224, 226-227 (9th Cir. 1988) (evidentiary admissions, or statements of fact contained in a brief, may be considered the admissions of a party at the discretion of the district court, while factual assertions in pleadings are judicial admissions conclusively binding on the party who made them.

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

[Exhibit Two to Affidavit of Jay Lansing]

Network Earth — Earth Matters

Producer Package Checklist:
Story Set-Up Packet

March 11, 1993 — Jack Hamann

Story Slug	**Coyote Killers**
Correspondent	**Jack Hamann**
Associate Producer	**Susan Olson**
Photographer	**Rob Rainey**
Tech	**Don Hooper**
Editor	
Shooting Dates	**March 22-28, 1992 [sic]**
Air Date	**late Spring/early Summer**

Story Synopsis

We are planning a 12-14 minute story, running on both sides of the first commercial break. Part One focuses on law enforcement. Part Two on the reluctant judicial system.

Overview:
Coyotes are one of the most enduring symbols of the American West . . . a mournful howl on a moonlit night across a vast expanse of prairie, plain or foothills. But coyotes are also the

enduring bane of the American sheep rancher . . . blamed for millions of dollars of lost lambs every Spring. Despite a hundred-year war, the coyote has not surrendered, and the killing continues to this day. Most coyotes are shot with rifles, or sprayed with small lethal bursts of cyanide hidden in buried canisters. But some sheep ranchers use a far more insidious weapon: deadly poisons. Rogue ranchers, in clear violation of state and federal laws, lace the carcasses of dead animals (sheep, calves, etc.) with potent pesticides, and leave them scattered around the public and private rangeland where their sheep graze. Coyotes suffer painful and violent deaths, but it doesn't stop there. Ravens and vultures and -- especially -- eagles . . . all eat the poisoned carcasses, too. US Fish & Wildlife agents call the sordid crime scenes "the Circle of Death."

Part One: Law Enforcement

We have exclusive access to what promises to be a major coyote, eagle poisoning case. The day before the raid, we'll meet with a team of state and federal agents and tape their briefing. Then we'll get up long before dawn and head for one of the most remote ranches in North America. As the sun breaks over the horizon, the agents, armed with federal search warrants, will swoop in looking for what is supposed to be a huge cache of illegal poisons. Agents will split into teams and look for carcasses left the night before. We'll try to follow the group that finds the dumping ground . . . the rancher's

graveyard of eagles and coyotes and other dead animals. The investigation will continue throughout the day, on both public and private lands, as the officers use airplane surveillance (we'll try to be on board for some of this) to spot dead eagles and coyotes anywhere they can. The evidence will be shipped to the USFWS forensics lab in Ashland, Oregon (Ken Goddard), and the results will end up in front of a federal grand jury.

Part Two: Reluctant Judges

Ours will not be the first raid on a sheep ranch in this area. Over the past few years, agents have tried time and again to put the fear of God into these rogue ranchers. But most of the time, the ranchers get off with barely a hand slap ... paying an average of just a few dollars per coyote or eagle killed. We'll present statistics that show that judges in this region have been reluctant to upset "the way of life" of the sheep ranching community, described by many of our sources as something out of the 19th Century. We'll talk to a woman who will vividly describe how her expensive sheep dogs died violent deaths after eating poisoned carcasses, and how she was run out of town by sheep ranchers when she threatened to complain. We'll here from a sheep rancher who was himself prosecuted, only to be let off easily, and now acts as a prime critic of efforts to crack down on the use of poisons. We'll also talk with sheep ranchers who don't use poisons, who will let our viewers know that they should

insist on poison-free wool and mutton as a way of helping the sheep industry chase out the bad apples. If possible, Part Two will include interviews with federal prosecutors (a certainty) and a federal judge (could be tough on this particular shoot) who will react to the statistics that seem to show that killing coyotes and eagles are only a rather modest cost of doing business.

Supreme Court of the United States

No. 97-1927

RODNEY C. HANLON, ET AL.

v.

PAUL W. BERGER ET UX.

No. 98-83

CHARLES H. WILSON, ET UX., ET AL.

v.

HARRY LAYNE, ETC., ET AL.

ORDER ALLOWING CERTIORARI.
Filed November 9, 1998.

The petitions for writs of certiorari are granted limited to the following questions: 1. Whether law enforcement officers violate the Fourth Amendment by allowing members of the news media to accompany them and to observe and record their execution of a warrant? 2. Whether, if this action violates the Fourth Amendment, the officers are nonetheless entitled to defense of qualified immunity? The cases are consolidated and a total of one hour is allotted for oral argument.

November 9, 1998